



**Town of Westford  
Zoning Board of Appeals**

Town Hall  
55 Main Street  
Westford, Massachusetts 01886  
[978] 692-5524 • Fax: [978] 399-2732

**MEETING AGENDA**  
**Wednesday, May 6, 2015**  
**7:00 p.m. Meeting**  
**Blanchard School AUDITORIUM**  
**14 West Street**  
**Westford, MA 01886**



**7:00 p.m.**

**1. Review of Draft Minutes**

January 21, 2015  
February 18, 2015  
February 25, 2015  
February 25, 2015 Executive Session (Not for distribution)  
March 18, 2015  
March 31, 2015  
April 15, 2015

**2. BOA 1501 SP (2) VAR (2) – 20 Commerce Way (also known as 540 Groton Road)  
(Newport Materials LLC and 540 Groton Road LLC)**

*Public hearing for 540 Groton Road, LLC and Newport Materials, LLC to request the following petitions (and any other permit or relief as may be required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing facility and associated materials stockpile yard. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.*

- Variance under Section 3.1.1 to allow an additional principal use on the lot.
- Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light Manufacturing.
- Special Permit under Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.

The above-listed petitions are related to a recent Decision issued by Land Court (10 MISC 429867). Materials related to these applications and the Land Court decisions can be found on the Planning Board's Web Page under the tab "Asphalt Plant" at:

[http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA\\_planning/index](http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/index)

The Board opened the Public Hearing on these matters on February 25, 2015, continued the hearing to March 18, 2015, and closed the hearings on March 18, 2015.

On March 31, 2015, the Board voted to re-open the public hearings. New legal notices were run in the Lowell Sun, and notices were mailed to abutters in Westford and Chelmsford.

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Victoria Johnson at 978-692-5524 or email to [vjohnson@westfordma.gov](mailto:vjohnson@westfordma.gov).



5

**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
Westford, Massachusetts 01886  
Phone (978) 692-5524 Fax (978) 399-2558

**MEETING MINUTES**

**Wednesday, January 21, 2015, 7:00 p.m.  
Town Hall Meeting Room 201  
55 Main Street, Westford, MA**

**Board Members Present:** Bob Herrmann, James Kazeniac, Scott MacKay, Paul MacMillan

**Not Present:** Mark Conlon, David Earl, Jay Enis, Scott Fitzgerald

**Staff Members Present:** Jeff Morrisette, Town Planner

Herrmann opened the meeting.

**Acceptance of Minutes:**

Draft Executive Session, January 8, 2015 – *Motion made by Mr. MacKay to approve the minutes, not for distribution at this time. Motion seconded by Mr. MacMillan. The motion passed unanimously.*

December 17, 2014 – *Motion made by Mr. MacMillan to approve the minutes. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

**Public Hearings:**

**BOA 1424 SP, 8 Pine Road, Continued from December 17, 2014** – *Daniel J. Doherty requests a Special permit under Section 3.6.8(2) of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw), to allow for the demolition of the existing nonconforming single family house and its reconstruction with a larger volume and new footprint. The property is located in the Residence B Zoning District and is identified as Assessor Map 069 Parcel 0033 Lot 0000.*

Herrmann indicated the applicant has requested to postpone this hearing to the Board's February 18 meeting.

*Motion made by Mr. Kazeniac to continue this hearing to February 18, 2015 in Meeting Room 201, Town Hall, 55 Main Street, Westford. Motion seconded by Mr. MacKay. The motion passed unanimously.*

**BOA 1426 VAR, 5 Lyberty Way, Continued from December 17, 2014** – *Ryan Development, LLC requests a Variance from the Table of Principal Use Regulations of the Westford Zoning Bylaw to establish an Indoor Commercial Recreation Use (indoor swimming teaching facility); a Variance from Section 5.1.6(3) of the Westford Zoning Bylaw to provide parking spaces nearer than 15' from the easterly lot line, and a Variance from Section 5.1.1 and Appendix D: Table of Parking Requirements of the Westford Zoning Bylaw, to provide fewer than the required number of parking spaces (and any other permit relief as may be required under the Westford Zoning Bylaw) to allow for*

1 the construction of two (2) additional commercial spaces. The property is located in the Industrial Highway Zoning  
2 District and is identified as Assessor Map 017 Parcel 0078 Lot 0000.

3  
4 Hermann noted there were only four Board members present and the applicant indicated they would  
5 like to move forward.

6  
7 Morrisette outlined the three variances the applicant is requesting. He stated at the last meeting it was  
8 recommended that staff go to the site to monitor parking demand and to consult with the Planning  
9 Board, as under the zoning bylaw for the commercial recreation use they can determine the required  
10 number of parking spaces as part of the site plan review. He indicated the Planning Board opened their  
11 hearing and established that for the commercial recreation use 34 parking spaces are required, and to  
12 have employee parking noted on the plan at the a location away from the actual facility. Morrisette  
13 stated he visited the site on several occasions and he presented his findings to the Board.

14  
15 Attorney Kevin Ericksen, representing the applicant, Ryan Development, addressed the Board. He  
16 stated they have submitted a modified plan to the Board based on the input received at the last meeting.  
17 They originally proposed 219 parking spaces on site and are now proposing 223 spaces on site, with  
18 compact spaces bringing the total to 231 spaces.

19  
20 Herrmann stated he has visited the site and was unaware that the lot was considered one lot. He  
21 expressed concern that people are not going to want to park too far away from the facility.  
22 Mr. Ericksen stated this is structured as shared parking among both buildings.

23  
24 MacKay asked what time swimming lessons will begin. Ericksen stated the earliest start time is  
25 9:00 a.m., but not every day. The majority of classes will be held in the evening from 4:00 p.m. to  
26 8:00 p.m. Kazeniac asked if there is anything in the leases that allots a number of spaces per tenant.  
27 Ericksen stated there is a limit of spaces in the lease. Herrmann confirmed that the applicant has the  
28 ability to tell existing tenants that they can no longer park in a certain location. Ericksen stated this is  
29 standard language in all leases. MacMillan recommended each tenant be assigned certain parking  
30 spaces.

31  
32 Herrmann expressed concern that the Conservation Commission may determine the building has to be  
33 moved further into the parking lot, which will affect the parking. He asked if the Conservation  
34 Commission has agreed to the current building location. Ericksen responded that Bill Turner has  
35 agreed with their line. Morrisette stated that if something did happen and the location of the building  
36 changed and affected the number of parking spaces, they would have to come back to this Board to  
37 modify the variance. MacMillan asked about snow storage. Ericksen indicated on the plan where the  
38 snow would be stored and stated they have plenty of snow storage.

39  
40 Ericksen indicated they would like to stripe the compact spaces only if it is determined by the zoning  
41 enforcement officer that parking is needed sometime in the future.

42  
43 There was no one present to speak in favor of, or opposition to, this request.

44  
45 *Motion made by Mr. Kazeniac to close the public hearing. Motion seconded by Mr. MacKay. The motion passed*  
46 *unanimously.*

Herrmann referenced as a condition the document dated January 21 regarding a revised variance request at 5 Lyberty Way.

*Motion made by Mr. MacKay to approve the use variance for recreational use in an IH district. Motion seconded by Mr. Kazeniac. Mr. MacMillan, Mr. Kazeniac, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

*Motion made by Mr. MacKay to approve the variance to parking setback to the side lot line of 6 feet. Motion seconded by Mr. Kazeniac. Mr. MacMillan, Mr. Kazeniac, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

*Motion made by Mr. MacKay to approve the variance for parking spaces, number to be 223, whereas 266 are needed, with striping of additional compact spaces if required by the code enforcement officer. Motion seconded by Mr. Kazeniac. Mr. MacMillan, Mr. Kazeniac, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

**BOA 1427 SP, 20 & 22 Old Lowell Road** – Harry Malkasian and Jennifer Welch request a Special Permit for the conversion of a dwelling under Appendix A: Table of Principal Use Regulations of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw) to allow for the legalization of a two-family dwelling. The property is located at 20 & 22 Old Lowell Road in the Residence A Zoning District and is identified as Assessor Map 012 Parcel 0061 Lot 0000.

*Motion made by Mr. MacKay to open the public hearing. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

*Motion made by Mr. MacKay to waive the entire reading of the public hearing notice. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

Harry Malkasian, 95 George Hill Road, Grafton, addressed the Board. He stated he and his wife own the property at 20 & 22 Old Lowell Road in Westford. They are requesting a special permit to continue the use of this property as a two family dwelling, as it has been used for over 50 years. He stated Morrisette advised them to seek this special permit as documentation could not be found which predates zoning.

Herrmann advised the applicant that there are only four Board members present and all four would have to agree with this request or the applicant would not be able to come back to the Board for two years. The applicant decided to go forward with the hearing.

Morrisette provided background information. He stated someone noticed there was nothing on file with the town that indicates there is permission for a two family dwelling. In conducting research the oldest records the Assessing Department could find which indicated this was a two family was from 1965. He stated in order to legitimize this he advised the applicant to come before the Board for a special permit.

There was no one present to speak in favor of, or opposition to, this request.

*Motion made by Mr. MacKay to close the public hearing. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

1 *Motion made by Mr. MacKay to grant the special permit for the conversion of the dwelling at 20 & 22 Old Lowell*  
2 *Road. Motion seconded by Mr. MacMillan. Mr. MacMillan, Mr. Kazeniac, Mr. MacKay, and Mr. Herrmann voted*  
3 *unanimously to approve.*

4  
5 **Non-Public Hearing Items:**

6  
7 Morrisette stated he has provided the Board with three proposed Zoning Bylaw Amendments and  
8 asked that they review these and get back to him with any questions or comments.

9  
10 *Motion made to adjourn. Motion seconded and carried unanimously.*

11  
12 **List of Documents and Other Items Used at the Meeting**  
13



**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
Westford, Massachusetts 01886  
Phone (978) 692-5524 Fax (978) 399-2558

**MEETING MINUTES**

**Wednesday, February 18, 2015, 7:00 p.m.  
Town Hall Meeting Room 201  
55 Main Street, Westford, MA**

**Board Members Present:** Bob Herrmann, David Earl, Jay Enis, James Kazeniac, Scott MacKay, Paul MacMillan

**Not Present:** Mark Conlon, Scott Fitzgerald

**Staff Members Present:** Jeff Morrisette, Town Planner

Herrmann opened the meeting.

**Public Hearings:**

**BOA 1424 SP, 8 Pine Road, Continued from January 21, 2015** – *Daniel J. Doherty requests a Special permit under Section 3.6.8(2) of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw), to allow for the demolition of the existing nonconforming single family house and its reconstruction with a larger volume and new footprint. The property is located in the Residence B Zoning District and is identified as Assessor Map 069 Parcel 0033 Lot 0000.*

Herrmann indicated the applicant has requested to postpone this hearing to the Board's March 18 meeting.

*Motion made by MacKay to continue this hearing to March 18, 2015 in Meeting Room 201, Town Hall, 55 Main Street, Westford. Motion seconded by Kazeniac. The motion passed unanimously.*

**BOA 1502 VAR, 183 Concord Road** – *Thomas Hood requests Variances from Appendix C, Table of Dimensional and Density Regulations of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw) to construct a detached garage to within 21.9 feet of Powers Road and to within 29.3 feet of Concord Road whereas 50 feet is required. The property is within the Residence A Zoning District and is identified as Assessor Map 011 Parcel 0073 Lot 0000.*

*Motion made by MacKay to open the public hearing. Motion seconded by Kazeniac. The motion passed unanimously.*

*Motion made by Kazeniac to waive the entire reading of the public hearing notice. Motion seconded by MacKay. The motion passed unanimously.*

Thomas Hood addressed the Board. He stated they are requesting to construct a 30' x 30' detached two story garage.

Herrmann stated when reviewing the plans he noted they seem to include more than a garage. Hood stated above the garage will be a three season recreational room. Herrmann confirmed with the applicant that there will be no water supply to the structure, heat, or bedrooms.

MacKay recommended that they strike language on the plan to remove the word residence and leave the word garage. Earl confirmed there is no residential property near the garage. Hood stated to the south side of Powers Road are quarries and to the north side of Powers Road there is a private road with residences on the other side.

There was no one present to speak in favor of, or opposition to, this request.

*Motion made by MacMillan to close the public hearing. Motion seconded by MacKay. The motion passed unanimously.*

*Motion made by MacKay to approve a variance for front yard setbacks of 21'9" and 29'3", where 50 feet is required, referencing plans done by Harry Allen dated January 8, 2015 and survey plan done by Barrow Surveying dated December 30, 2014, with condition that there will be no eating or sleeping facilities in the second floor of the garage, and the word "residence" be stricken from the plans. Motion seconded by MacMillan. Mr. MacMillan, Mr. Enis, Mr. Kazeniac, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

**BOA 1503 SP VAR, 27 Chamberlain Road** – Daniel Ollila of Jones Architecture requests a Special Permit to allow for the construction of an Accessory Dwelling Unit, a Variance from Section 3.3.4(1) to allow for the construction of a 994 SF Accessory Dwelling Unit whereas 800 SF is allowed, and a Variance from Section 3.3.4 (3)(a) to allow for the construction of an Accessory Dwelling Unit that creates more than a 15% increase in the gross floor space of the structure (and any other permit relief as may be required under the Westford Zoning Bylaw). The property is within the Residence A Zoning District and is identified a Assessor Map 038 Parcel 0001 Lot 0000.

Herrmann indicated the applicant has requested to postpone this hearing to the Board's March 18 meeting.

*Motion made by MacKay to continue this hearing to March 18, 2015 in Meeting Room 201, Town Hall, 55 Main Street, Westford. Motion seconded by Kazeniac. The motion passed unanimously.*

### **Non-Public Hearing Items:**

Graniteville Woods, Discussion regarding Memorandum of Agreement – Morrisette stated in the Board's packet is a draft landscaping plan for the Minot's Corner intersection. He stated this is part of the development agreement with Graniteville Woods. Chuck Emanuel is reviewing the plan and will provide an estimate so they can come before the Board and indicate how much of this they think they can do. MacKay expressed concern that residents may pick the lavender and thyme included in the plan.

Kazeniac asked who would maintain this landscaping, especially after a rough winter. Morrisette stated this has been designed for low to no maintenance. They may discuss with the applicant having sponsorship of this island to provide maintenance. The Board asked if the Welcome granite is going to be replaced. Morrisette was unsure, and indicated there has been discussion of putting a statue of Captain Minot somewhere in this area.

1 Summer Village, Clarification on Conditions of Approval – Douglas Deschenes, representing the  
2 applicant, addressed the Board. He stated the project was built in conformance with the permits and  
3 the amount of time spent on the project. He indicated there are residents questioning what they can do  
4 with their units and they have made it clear that the units are under 800 SF and there are to be no  
5 additions and no alterations. He stated one resident felt he was entitled to construct a small addition  
6 because although the entire unit was built at 800 SF, he did not have 800 SF of living space.

7  
8 Discussion was held on the design of the units. There were two units built using the original design  
9 and dozens of units built using four additional designs. When the economy dipped and there were  
10 resales occurring they came up with two new designs to stimulate sales, of which there are  
11 approximately 8 units. This spring they are hoping to have one or two additional designs. All the  
12 designs meet the criteria of under 800 SF, two bedrooms, and in keeping with the vision.

13  
14 Herrmann asked if Mr. Guthrie is finished with the work at this location. Deschenes indicated he  
15 believes they have an additional 40 to 50 units to construct. Deschenes indicated that Mr. Guthrie  
16 would like the Board to visit the site if they have an opportunity.

17  
18 Morrisette stated he suggested to Mr. Guthrie that he proactively come to the Board and have this  
19 conversation because after the last meeting it was his impression that the Building Commissioner was  
20 instructed not to approve a single additional dwelling style other than those the Board had originally  
21 approved. He stated this is completely different than putting an expansion, addition, or modification  
22 after the fact, as this would be in violation of the conditions of the project and they need to come back  
23 to the Board to get permission for that.

24  
25 Deschenes stated there are 10 designs currently on the site. If they decide on two or three more styles  
26 for the spring they can submit the plans to the Board to show they are all within the requirements. He  
27 stated over the years individual unit owners have actually gotten building permits to do a closet or  
28 bump out and it was only when someone tried to do this and a question was raised that the Building  
29 Commissioner requested direction. He stated the fallout now is that the Building Commissioner is not  
30 issuing any building permits to Mr. Guthrie on any units at all. He asked the Board if the Building  
31 Commissioner can start issuing permits to build the additional units.

32  
33 Morrisette stated his understanding is that if there is a different design that the Board has not seen the  
34 Building Commissioner does not consider the applicant has permission to do this. Deschenes stated he  
35 could not find anything in the original decision indicating that they were limited to a certain number of  
36 plans. Kazeniac stated there was an insinuation by an applicant that the new units were being built with  
37 800 SF of living space, making the outside living space in excess of the 800 SF allowed and this caused  
38 the Board to question what was agreed upon.

39  
40 Morrisette stated he would draw up a rough decision stating these designs as submitted herein are  
41 approved for use and other designs may be submitted for review and approval by the Town Planner  
42 and Building Commissioner to determine consistency with the decision.

43  
44 *Motion made by MacKay to authorize the ten designs as provided herein tonight, and to allow other designs to be reviewed*  
45 *and approved by the Town Planner and Building Commissioner after they determine it is in conformance with the Board's*  
46 *decision. Motion seconded by Kazeniac. The motion passed unanimously.*

1 Cottages in the Woods (BOA 1008 CP) – Herrmann asked when the paving will be complete for this  
2 project. Deschenes indicated he is unsure but will look into it. MacKay pointed out that the  
3 emergency access road to the project has not been plowed, which creates a safety hazard. Deschenes  
4 stated he will act on that tomorrow.

5  
6 Proposed Zoning Bylaw Amendments – Morrisette reviewed the proposed amendments for  
7 Nonconforming Uses, Structures, and Lots; Site Plan Review; and Massage Therapy. He stated he is  
8 requesting comments by the Board's next regular meeting.

9  
10 The Board discussed Article 25, a citizen petition article being presented at Town Meeting which would  
11 affect how meetings are conducted and how minutes are produced. The Board expressed concern with  
12 the language of this article given the lack of staff resources for many Boards and liability issues.

13  
14 Morrisette stated the Board may want to weigh-in on Article 24, which is a citizen petition relative to  
15 affordable housing. He asked the Board to read through the articles discussed prior to their next  
16 regular meeting.

17  
18 *Motion made to adjourn. Motion seconded and carried unanimously.*

19  
20  
21 **List of Documents and Other Items Used at the Meeting**  
22



**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
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**MEETING MINUTES  
Wednesday, February 25, 2015, 7:00 p.m.  
Blanchard Middle School Auditorium  
14 West Street, Westford, MA**

**Approved March 31, 2015**

**Board Members Present:** Bob Herrmann, David Earl, Jay Enis, James Kazeniac, Scott Fitzgerald, Scott MacKay, Paul MacMillan

**Not Present:** Mark Conlon

**Staff Members Present:** Chris Kluchman, AICP; Jeff Morrisette, Town Planner; Jonathan Silverstein, Town Counsel

Herrmann opened the meeting.

**Public Hearing:**

**BOA 1501 SP (2) – 20 Commerce Way (also known as 540 Groton Road), Newport Materials LLC and 540 Groton Road LLC – Public hearing for 540 Groton Road LLC and Newport Materials LLC to request the following petitions (and any other permit or relief as may be required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing facility and associated materials stockpile yard. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District:**

- *Variance under Section 3.1.1 to allow an additional principal use on the lot*
- *Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light Manufacturing*
- *Special Permit under Section 9.3 pursuant to Section 3.1 to allow for multiple principal uses on the site*
- *Special Permit under Section 3.6.2 for the extension of a preexisting nonconforming use on a single lot*

Mr. Herrmann provided an overview of the meeting and procedures. He stated the Zoning Board of Appeals is a Board that reacts to issues rather than plans around issues. The applicant has brought forth four actions which the Board will review. He stated safety measures or how the plant is powered do not fall under the jurisdiction of the Board.

Douglas Deschenes, representing Newport Materials LLC and 540 Groton Road LLC, requested to withdraw the special permit requested under Section 9.3.

*Motion made by Mr. MacKay to allow the applicant to withdraw special permit request under Section 9.3. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

Approved March 31, 2015

*Motion made by Mr. MacKay to open the public hearing. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

*Motion made by Mr. MacKay to waive the entire reading of the public hearing notice. Motion seconded by Mr. Kazeniac. The motion passed unanimously.*

Herrmann indicated voting members for this hearing will be himself, Enis, Kazeniac, MacKay, and MacMillan.

Deschenes addressed the Board. Present with him was Rick DeFelice, Manager of 540 Groton Road LLC and Newport Materials LLC, and Matt Waterman from LandTech Consultants, Inc. He stated they are seeking three permits associated with the proposed bituminous concrete manufacturing facility to be located at 540 Groton Road. They are currently before the Planning Board on a number of permits on remand from the Land Court. He stated regardless of the outcome of this hearing, they will still be obligated to obtain all four permits they are seeking from the Planning Board.

Deschenes provided an overview of the proposed site. This is a 115 acre lot located in the Industrial A zone. A subdivision was approved by the Planning Board for this property, however, they have not effectuated that permit and are not looking at multiple lots on a subdivision road, but rather one lot. The area is surrounded primarily by commercial and industrial uses. There are two existing quarries to the north, one which blasts stone and one which crushes stone. The Fletcher Granite quarry and a concrete manufacturing facility are also in the surrounding area. There are commercial buildings along Route 40, including the Fletcher Granite Company. The closest residential neighborhood is about 1360 feet away from this property.

On this site there is currently an asphalt, brick, and concrete processing operation which is operating under a special permit granted by the Zoning Board of Appeals. Wood storage, truck and trailer storage, retail sales of product to industrial and commercial buyers, and a solar farm are also located on the site. Historically there have been multiple uses on this site.

They are proposing a manufacturing plant located 1400 feet off of Route 40. This plant will manufacture bituminous concrete (asphalt). It will produce on average 1200-1500 ton of material a day. They will know how much to produce on any given day based on orders placed in advance. A small fraction of material may be needed for small jobs such as driveways. The ABC processing plant previously permitted will continue to operate independently. The only connection between them is that as part of the manufacturing process recycled asphalt pavement (RAP) will be provided by them to the asphalt plant. They will have four storage silos on site to store the manufactured material. The ABC plant has a right-hand turn limitation and they anticipate this will facility will have the same restriction. The proposed hours of operation are 6:00 a.m. to 7:00 p.m. , but they do not anticipate much activity after 4:00 p.m. as they will not be providing material for night paving jobs.

Kazeniac asked if the aggregate being used will come from the quarry on site or from outside. Deschenes stated they expect to get some stone from the quarry, but will be having stone, liquid asphalt, sand, and No. 2 fuel oil delivered onto the site. DeFelice stated half the stone at minimum will come from the quarry. That amount could be more but for traffic planning they assumed 50% will be trucked in. They are proposing two 30,000 gallon tanks of liquid asphalt and a 10,000 gallon tank of

No. 2 fuel oil. The No. 2 fuel oil will be used as a backup to their natural gas system, as well as an insulating and heating element for the liquid asphalt.

Kluchman asked where on the applicant's site quarrying has been conducted. DeFelice stated they have quarried in several locations on the site. He provided an overview of these locations on the map. She asked if this use was accessory to the ABC facility. DeFelice stated the quarrying was not associated with the ABC facility. Jonathan Silverstein, Town Counsel, asked if the quarrying on this site was taking place before DeFelice took ownership of the site. DeFelice stated absolutely. He indicated Modern Continental mined hundreds of thousands of tons for the Route 3 project. Silverstein asked how frequently material has been taken out since he has owned the property and how much. DeFelice stated he has been on the property since 2009 and for a three year period 20,000 to 30,000 ton of material was quarried, but not in recent years. Deschenes indicated they can provide specific information to Mr. Silverstein to answer these questions. Matt Waterman, LandTech Consultants, stated the northerly portion of this parcel was quarried when the Greystone subdivision was being constructed.

Earl asked what is on the site between the proposed operation and the nearest home at 1300 feet. Deschenes responded commercial vehicles, trailers, and piles of materials, storage buildings, a cell tower, and a very large wetland are between the house and their site.

Deschenes stated in the context of the litigation regarding this site the judge pointed out that the Westford Zoning Bylaw under Section 3.1 expressly prohibits multiple principal uses on a site in the Town of Westford, unless otherwise allowed. The judge indicated if they want to have multiple principal uses on the site they would need a permit to do so and suggested they seek a variance. However, they already have multiple uses on the site which constitute a preexisting nonconforming use. If there is a preexisting nonconformance it can be changed or extended by special permit, provided it will not be significantly more detrimental to the neighborhood.

Deschenes stated they are agreeing to limit truck traffic to 125 trucks in and 125 trucks out. They feel the project will serve social, economic, and community needs. The Highway Department is in need of this material, as well as private projects in town. He stated there is sufficient water, electricity, sanitary services, telephone, and data lines readily available to the site. The only new utility being brought in is the gas line. The project has been reviewed by Fire and Police and both have provided letters indicating this project could be safe as long as they meet specific requirements.

Deschenes indicated there have been extensive environmental studies conducted on this site. The site has changed so much over the years it is hard to define the natural environment. There are wetlands on the site. There is little, if any, natural vegetation. He stated the facility will not have a detrimental effect on the natural environment. There was a study conducted which determined the proposed plant would not produce any detrimental health impacts, and this was verified by the town's peer reviewer. They have received a clean air permit from the DEP which determined the operation will be safe for the environment and people in the neighborhood. Silverstein clarified that at trial the town did not pursue a particular argument, but at no point did they stipulate there would be no impact on health.

Deschenes indicated this facility will result in increased property values for the site resulting in an increased tax base for the town, which will generate additional revenue to the town. The facility will generate new employment opportunities, increased business opportunities, and potential cost savings

within the construction industry and town, adding to the overall health and growth of the local economy. He stated allowing a special permit to extend their existing array of principal uses to include a new principal use will not be more detrimental to the neighborhood than what is currently operating. He asked the Board to consider granting this special permit. He stated if this special permit is granted their application for a variance under 3.1.1 would not be necessary and would be withdrawn.

Herrmann asked what facility that is currently on the site will be changing or extending that will fall under the special permit. Deschenes stated there are two preexisting nonconforming situations on which the Board could base its determination. The retail sales of stone, sand, and granite to industrial and commercial buyers is the nonconforming use on which they based their request to extend for the ABC processing and they are asking for an extension of that for this facility.

Silverstein clarified that to be a preexisting nonconforming use the use has to preexist the zoning bylaw Section 3.1. He stated the solar facility does not predate Section 3.1 and the office building may not predate Section 3.1, and asked that Deschenes provide the current and historic uses of the site indicating which uses predate Section 3.1, and which uses are currently continuing. He stated this information would have to be determined in order for the Board to make a decision on whether the multiple use of the site predates the prohibition, and if the use is a principal use or an occasional use, or has at any point been discontinued for a period of two years, during which time the grandfathering protection would have been lost.

Deschenes stated that the Board concluded several years ago that the quarry has been operating for over 100 years and selling material to industrial and commercial buyers and was a preexisting nonconforming use occurring on the property. The Board can extend that use or change it as long as the applicant can show that the nonconforming use will not be significantly more detrimental to the neighborhood than what is going on there today. Silverstein clarified that the bylaw states you can either change or extend, or you can change from one to another, and in this instance they are not eliminating the retail sales. He questioned if this will be the addition of another principal use, where there were multiple principal uses when 3.1 was adopted.

Deschenes stated he feels adding another principal use would be an extension. Silverstein stated that is correct, however, the Board needs to address were there multiple principal uses as of the date that 3.1 came into effect and are they the principal uses that continue through to today, apart from those that have received zoning relief. Deschenes stated there have been quarrying and retail sales to industrial and commercial buyers on this site since the turn of the century, and they exist today. These are two principal uses that pre-dated Section 3.1. He indicated they would have to get specific information on the current quarrying operation.

Deschenes stated he would like to review the request for variance from the sound standard. Herrmann stated he is going to ask the Board to continue this item at the end of the hearing because what the Planning Board does has a direct bearing on this variance. He stated he does not feel this should be before the Board until the Planning Board makes their decision. Deschenes stated typically he would come to the Zoning Board for a variance before moving forward with permitting of a project. He asked that he be able to present information to the Board.

Deschenes stated the Major Commercial Project (MCP) permit has very clear sound standards that must be met and the definition of light manufacturing only indicates the machinery has to be quiet. He

stated the judge pointed out that there is no definition of quiet in the bylaw so he instructed that in determining what is or is not quiet they should apply the sound standards for the MCP, which state you cannot exceed 70 dBA sounds levels at your property lines, nor can you increase the ambient sound level at your property line by more than 10 dB. They have determined there is one property boundary where they do not meet that standard. He stated they are before the Planning Board and have requested a waiver to having to provide sound attenuation. If they are granted that waiver they will still need a variance because they will have no way of meeting the judge's definition of quiet machinery.

Jeff Morrisette stated typically when trying to create a lot that lacks frontage applicants would have to go the Zoning Board first, before they go to the Planning Board. This situation is unique in that whether or not relief is needed stems from a future Planning Board action, which is very unlike most applications. In this case no relief is needed unless the Planning Board takes a very specific action. He stated the Zoning Board, when considering whether or not to grant a variance, which is breaking the bylaws, should grant the absolute minimum relief needed for a given proposal and right now it is uncertain if any relief is needed. He stated it would not be wise for this Board to break the bylaws until such time as they know how much relief is needed, and whether it is needed at all. He stressed sound is still being analyzed through the Planning Board process, is still not finalized, and the Board should have the benefit of making as informed a decision as possible.

MacKay asked which property boundary does not meet the sound requirements. Deschenes indicated the westerly boundary, directly adjacent to the Fletcher Quarry. At the westerly property boundary they are 75 dBA, which is 5 dBA over the 70 dBA limit. Additionally, because the ambient sound at that boundary was 43, going up to 75 is an increase of 32 dB and the bylaw says they can only increase by 10. The bylaw states to get a variance you must show a hardship owing to the soil, shape, and topography of the site. He indicated the site is very large, over 115 acres, and has a relatively small amount of road frontage and only a single access point. Due to the quarrying on the site all of the topography has been dramatically altered by excavation and filling creating topography changes. Denial of the variance would create a hardship in that the applicant is continuing to pay real estate taxes based on the allowed uses on the property of 115 acres and they are being told they can have only one principal use on it. He stated the proposed use will not constitute a public health or safety hazard and the intent of the bylaw is to protect people outside of the site, however, their neighbor they are looking to protect is a granite quarry 35 to 50 feet above their site.

Kluchman clarified that under Section 9.3 the more important standard is not the difference between 75 and 70 dBA, it is the difference between the 10 dB they exceed at that boundary, which would be a sound limit of 53 dB, which is 22 dB above. She clarified that in this variance application the applicant did not state what number is being requested, as they do not know what that number is because it is unknown what the Planning Board is going to do with the waiver. She compared this to an applicant coming for a variance from a side yard setback but not knowing the amount of the setback.

Herrmann opened the floor up for public discussion.

Bob Krankewicz, 15 Boston Road – He stated Judge Sands made it clear on December that the court was not ordering the Planning Board to approve the special permits. Also, the Zoning Board is not under the court's jurisdiction for the pending application for variances and special permits. He asked the Zoning Board not to approve these variances and special permits. He stated knows the intent of the bylaw as he participated in writing it and the judge overlooked the overall values the community

expressed in its 2009 Master Plan and has gone out of his way to craft a means to coopt the community into allowing a business that it does not want. He stated if the Board approves a variance they will be ignoring the will of the community and acting counter to the intent of the Master Plan and its zoning bylaws.

Carol Savoy, Russell's Way – She stated she feels this would be a detriment to the community. She believes this plant would take away from her beautiful neighborhood. She expressed concern with odor and air quality, property values, and truck traffic.

Marie Bernam, 255 Groton Road – She stated she lives about 1/10<sup>th</sup> of a mile from this site. She expressed concern that the abutting properties have been misrepresented. She stated Groton Road is a residential road and consists of 18 single family homes. The businesses on the site historically have been a bus and truck company. Directly behind her is a light industrial. She stated 200 feet in each direction is purely residential, not commercial or industrial. She indicated they were told there was an insignificant health risk, not that there is no health risk. She stated Route 40 is a town owned road and she is currently researching limitations on weight and the enforcement of those limitations, which would prohibit taking left turns from 540 Groton Road. She stated she finds a lot of disrespect toward the residents of Chelmsford with this project.

Herrmann clarified that Route 40 is a state numbered road that is maintained by the town with state funds, it is not a town owned road.

Martin Corbett, 7 Danley Drive – He stated the Rita Edward Miller School will be impacted by the smell from this site. He stated the trucks will be going by the daycare center located on Route 40. He expressed concerns with emissions from the trucks. He asked if Fletcher Granite ever sold industrially and commercially from this piece of property. He stated the 22 dB discussed is a 128 x increase in the amount of sound. He asked if there is any waste product produced. He asked if the employment opportunities are guaranteed for Westford residents.

Deschenes responded there is no waste product, the asphalt is ground up and reintegrated into the system. He indicated they will be an equal opportunity employer and the opportunities are not necessarily for Westford.

Corbett asked what the plans are for further growth on the site and what would prohibit the applicant from increasing from 250 truck trips to 400. Deschenes stated if they want to add another principal use to the site they would have to come in for another variance or special permit, and they would not be able to violate the 250 truck trip limit if the permit limits them to that amount.

Wendy Welch, 11 Edwards Ave, Nabnasset – She expressed concern with the odor from the asphalt plant, as her son is sensitive to smells. She stated this would be a significant detriment for her. She also expressed concern with being able to sell her house if there were odor from the plant, which would be a significant detriment to her and all her neighbors. She asked the Board not to approve the variances. She expressed concern with the definition of quiet.

Kathy Leafquist, Crown Road – She stated the addition of a gas line, plus three silos, two of which contain 30,000 of chemical and one that contains 10,000 of fuel oil, sounds a lot different than the existing quarrying activities that are happening on the site and do not sound like an extension of what is currently going on at the site. She expressed concern with potential contamination at the site, similar to

Superfund sites in other towns. She stated the asphalt plant will decrease the property values in Westford.

Alisa Nakashian, Betty Lane – She provided the Board with a letter outlining her concerns. She expressed opposition to the requested variance and special permit to allow multiple uses on the property. She expressed concern with truck traffic and monitoring. She urged to Board to hold off on voting on the issue regarding noise until the Planning Board makes a decision. She stated she can hear noise from Route 3, so would most certainly hear noise from this operation. She urged the Board to consider waiting on all these matters until the traffic study has been reviewed. She stated this will be a substantial detriment to this neighborhood. She recommended the Police and Fire Departments of Chelmsford also be consulted regarding this project and she hopes the Board will consider the residents of Westford, and Chelmsford, in their decision making.

Arun Mulpur, Danley Drive – He stated he provided a letter to Mr. Morrisette today. Herrmann stated he does have that letter and it has been entered into the official record. He expressed concern with the impact this project will have on the residents, schools, and doctor's offices in the area.

A resident expressed concern with the odor that will be emitted from the site. She stated she was within a half mile of an existing asphalt plant and the smell of asphalt was very strong and very offensive. She asked for clarification on the information provided that there would not be an odor from this asphalt plant. DeFelice stated an additive named Ecosorb will be added to the liquid asphalt and neutralize the odor. She asked for a guarantee that there will be no smell of asphalt from the plant at all. DeFelice stated that is what they have been told by the manufacturer. He stated he grew up next door to an asphalt plant and none of the residents have done the studies that he has done and do not know what they are talking about.

Hui Huang, 9 Vineyard Road – He stated the applicant asserted this project would not be a detriment but he did research and there are property value studies documenting losses of up to 56% of value because of asphalt plants. He stated he hopes the Board will take that into consideration.

Resident, 29 Morrison Lane – He asked how the applicant can ask for a variance on an extension when retail sales are part of the quarrying business. Herrmann clarified that Westford's bylaws allow this if the applicant comes before the Board and it is approved. Deschenes stated the bylaw defines the actual quarrying and the sale to retail and wholesale buyers as separate principal uses. Deschenes indicated Westford allowed multiple uses on a site for years until the judge pointed out that multiple uses were not allowed per the bylaw.

There was no one present to speak in favor of this request.

Herrmann recommended continuing this discussion to the Board's March meeting. In the interim he would like to review the traffic study. Kazeniac asked that DeFelice provide the Board with additional information on the additive he discussed which will neutralize odor because he experiences odors near other asphalt plants and the Board raised the possibly a sample of this material. The Board requested information on noise be provided prior to the next meeting. MacMillan requested additional information about the types of traffic generated by the facility. Deschenes responded that such information would be part of the traffic study provided prior to the next hearing.

Eric Lindquist – Crown Road requested that the applicant bring in a bucket of asphalt with the odor neutralizing agent to the next hearing.

*Motion made by Mr. Enis to continue this hearing to March 18, 2015 at 7:30 p.m. in Meeting Room 201, Town Hall. Motion seconded by Mr. MacMillan. The motion passed unanimously.*

*Motion made to adjourn. Motion seconded and carried unanimously.*

### **List of Documents and Other Items Used at the Meeting**

1. Public hearing notice BA 1501 SP VAR
2. Staff report dated February 20, 2015 for BOA 1501 SP SP VAR VAR
3. Plan of Land ANR, 540 Groton Road, prepared by LandTech, dated 7/28/11
4. Cover letter from Douglas Deschenes and Application for VAR under 9.2.2 in accordance with Land Court Decision for relief relative to sound and the definition of Light Manufacturing.
5. Cover letter from Douglas Deschenes and Application for VAR under section 9.2.2 for multiple uses on one site.
6. Cover letter from Douglas Deschenes and Application for Special Permit under Section 9.3 for multiple uses on the site.
7. Cover letter from Douglas Deschenes and Application for Special Permit under 3.6.2 for the extension of a pre-existing nonconforming use on the property to allow for an additional principal use where multiple principal uses currently exist, pursuant to Section 3.6.2 of the Westford Zoning Bylaw to allow for the addition of an Asphalt Manufacturing Facility at 540 Groton Road.
8. Other application materials such as abutter lists, deeds.
9. Land Court decision (10 MISC 429867 (AHS) – Newport Materials, LLC and 540 Groton Road, LLC, Plaintiffs, vs. Planning Board of the Town of Westford and the Town of Westford, Defendants).
10. Aerial photograph of the site.
11. “Zoning Board of Appeals Plan” prepared by LandTech, dated December 31, 2014.



**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
Westford, Massachusetts 01886  
Phone (978) 692-5524 Fax (978) 399-2558

**MEETING MINUTES**

**Wednesday, March 18, 2015, 7:00 p.m.  
Town Hall, Meeting Room 201  
55 Main Street, Westford, MA**

**Board Members Present:** Bob Herrmann, Jay Enis, Scott Fitzgerald, Scott MacKay,  
Paul MacMillan

**Not Present:** Mark Conlon, David Earl, James Kazeniac

**Staff Members Present:** Jeff Morrisette, Town Planner

Herrmann opened the meeting.

**Public Hearings:**

**BOA 1424 SP, 8 Pine Road, Continued from February 18, 2015** – *Daniel J. Doherty requests a Special Permit under Section 3.6.8(2) of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw) to allow for the demolition of the existing nonconforming single family house and its reconstruction with a larger volume and new footprint. The property is within the Residence B Zoning District and is identified as Assessor Map 069 Parcel 0033 Lot 0000.*

Herrmann stated the applicant has requested to withdraw without prejudice.

*Motion made by MacKay to accept the withdrawal without prejudice. Motion seconded by Fitzgerald. The motion passed unanimously.*

**BOA 1503 SP VAR, 27 Chamberlain Road** – *Daniel Ollila of Jones Architecture requests a Special Permit to allow for the construction of an Accessory Dwelling Unit, a Variance from Section 3.3.4(1) to allow for the construction of a 994 SF Accessory Dwelling Unit whereas 800 SF is allowed, and a Variance from Section 3.3.4(3)(a) to allow for the construction of an Accessory Dwelling Unit that creates more than a 15% increase in the gross floor space of the structure (and any other permit relief as may be required under the Westford Zoning Bylaw). The property is within the Residence A Zoning District and is identified as Assessor Map 038 Parcel 0001 Lot 0000*

Herrmann requested that Scott Fitzgerald sit in on this hearing.

*Motion made by Fitzgerald to open the public hearing. Motion seconded by MacKay. The motion passed unanimously.*

*Motion made by MacKay to waive the entire reading of the public hearing notice. Motion seconded by Fitzgerald. The motion passed unanimously.*

Daniel Ollila, representing the applicant, addressed the Board. He stated they are requesting a Special Permit and Variance for an Accessory Dwelling Unit that will be an in-law apartment for the applicant's parents. He reviewed the plans. They propose demolition of an existing 310 SF sunroom and the addition of a mudroom, along with the Accessory Dwelling Unit, to allow access to the existing house and the addition. The existing living space of the home is 2,035 SF, and the proposed addition is 1,100 SF. This is more than is allowed by Special Permit so they are also seeking a variance. If the square footage of the garage and sunroom were included they would only be adding 827 SF.

MacKay asked if the Board has to approve the septic system. Ollila stated yes, this application was submitted to the Board of Health. John Norton addressed the Board. He stated the 1,000 tank will have to be replaced with a tank and a half at the same site, and they have to ensure the D-Box is located in the correct position and workable. They currently have a permit for the removal of the existing tank.

There was no one present to speak in favor of, or opposition to, this request.

Herrmann stated because houses are bigger than they used to be the Board may have to be more flexible on the 800 SF. He stated what makes the extra space more acceptable is the fact that the plan includes wider doorways and hallways, looking ahead to the future.

MacMillan asked if the loft space will become a bedroom. The applicant responded no. MacKay stated he would want that to be a condition of approval.

*Motion made by MacKay to close the public hearing. Motion seconded by MacMillan. The motion passed unanimously.*

*Motion made by MacKay to approve Variance from Section 3.3.4(1), area limitation of an Accessory Dwelling Unit in a Residence A. Motion seconded by Fitzgerald. Mr. MacMillan, Mr. Enis, Mr. Fitzgerald, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

Herrmann informed the applicant that they are required to sign an affidavit indicating this Special Permit is only in effect as long as they own the house.

*Motion made by MacKay to approve a Special Permit to Section 3.3.2 for an Accessory Dwelling unit, referencing plans done by Jones Architecture, Inc. dated January 16, 2015, and revised February 20, 2015, and the plot plan done by Forsythe Engineering dated January 15, 2015, conditioned upon the loft area not being used as a bedroom. Motion seconded by Fitzgerald. Mr. MacMillan, Mr. Enis, Mr. Fitzgerald, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

Herrmann stated Morrisette has 14 days to write the decision. It then has to be registered with the Town Clerk and the Registry of Deeds. The public has the right within 20 days to appeal the decision.

**BOA 1504 VAR, 154 Plain Road** – Bruce J. Harper requests a Variance from Appendix C, Table of Dimensional and Density Regulations of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw) to construct an attached garage that would be located 12 feet from the easterly side lot line whereas 15 feet is required. The property is within the Residence B Zoning District and is identified as Assessor Map 070 Parcel 0070 Lot 0000.

1 *Motion made by MacKay to open the public hearing. Motion seconded by Fitzgerald. The motion passed unanimously.*

2  
3 *Motion made by MacKay to waive the entire reading of the public hearing notice. Motion seconded by*  
4 *Fitzgerald. The motion passed unanimously.*

5  
6 Herrmann indicated Scott Fitzgerald will sit in on this hearing.

7  
8 Bruce Harper, applicant, addressed the Board. Present with him was his wife, Kathleen Harper. He  
9 stated they would like to construct a 14' x 30' single story garage. He stated Plain Road has a slight  
10 curve and his lot is straight to the road, so he loses some of his side yard. He stated he owns a vehicle  
11 which measures 14' with both doors opened so the garage would have to be 14' wide. The garage, if  
12 approved, will abut the neighbor's garage, who have indicated they have no problem with this proposal.

13  
14 There was no one present to speak in favor or, or opposition to, this request.

15  
16 *Motion made by MacKay to close the public hearing. Motion seconded by Fitzgerald. The motion passed unanimously.*

17  
18 *Motion made by MacKay to approve the variance, referencing plot plans done by P.M. Flaberty Associates, dated*  
19 *December 7, 2014, and the plans done by Clark Architectural dated December 5, 2014. Motion seconded by Fitzgerald.*  
20 *Mr. MacMillan, Mr. Enis, Mr. Fitzgerald, Mr. MacKay, and Mr. Herrmann voted unanimously to approve.*

21  
22 Herrmann stated Morrisette has 14 days to write the decision. It then has to be registered with the  
23 Town Clerk and the Registry of Deeds. The public has the right within 20 days to appeal the decision.

24  
25 **BOA 1501 SP (2) – 20 Commerce Way (also known as 540 Groton Road), Newport Materials**  
26 **LLC and 540 Groton Road LLC, Continued from February 25, 2015 – Public hearing for 540 Groton**  
27 **Road LLC and Newport Materials LLC to request the following petitions (and any other permit or relief as may be**  
28 **required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing**  
29 **facility and associated materials stockpile yard. The subject property is identified as Assessor's Map 048 Parcel 0011**  
30 **Lot 0234 and is within the Industrial A Zoning District:**

- 31  
32
  - *Variance under Section 3.1.1 to allow an additional principal use on the lot*
  - 33 • *Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light*
  - 34 *Manufacturing*
  - 35 • *Special Permit under Section 3.6.2 for the extension of a preexisting nonconforming use on a single lot*

36  
37 Mr. Herrmann listed for the record communications sent to the Board: John Pecora, 249 Groton  
38 Road, N. Chelmsford in opposition; Paolo & Daniella Zetto in opposition; Patty & Mike Arnold, 17  
39 Vineyard Rd. in opposition; Ron Mulper, 2 Daniel Drive, Westford, in opposition; David Hudson in  
40 opposition; Robert Creegan, 16 MacQuarrie Lane, in opposition; Bob Krankewicz, Boston Road, in  
41 opposition. He noted that he takes offense to the last paragraph of Mr. Krankewicz' letter. He  
42 indicated this Board acts upon what is in the best interest of the Town of Westford, as well as the  
43 applicant and abutters.

1 Herrmann indicated James Kazeniak, who sat in on the hearing last month, is not present. Scott  
2 Fitzgerald will now be sitting in on this hearing.

3  
4 Mr. Herrmann indicated he reviewed the traffic reports provided and they indicate there would be a  
5 negligible change to the present conditions. The Board also received information from Ecosorb  
6 regarding what can be added to asphalt to eliminate the odor. A noise study was received which  
7 indicates the only potential impact is in the area of the proposed operation and Fletcher Quarry.

8  
9 Douglas Deschenes, representing the applicant, addressed the Board. Present with him was Rick  
10 DeFelice from Newport Materials, LLC. He reviewed the permits they are seeking. They are seeking a  
11 Variance and Special Permit relative to the number of uses on the site, and a Variance to the sound  
12 levels.

13  
14 Deschenes stated the court revealed to them that the Town of Westford bylaws in no way allow  
15 multiple uses on a single site. This came as a surprise because there are many examples throughout the  
16 town where multiple uses are allowed on a single site. Due to this the judge instructed them to seek a  
17 Special Permit. He stated staff has indicated that multiple uses existing on a site is not a preexisting,  
18 nonconforming use, and the applicant is incorrect in applying for a Special Permit under this basis.  
19 They have requested a history dating back before zoning showing every use of the property and why it  
20 is preexisting, nonconforming. He indicated compiling this information would take a tremendous  
21 amount of time and he is not going to continue to argue this.

22  
23 Deschenes stated he will continue to argue that they have a preexisting, nonconforming use of materials  
24 processing and retail sales to commercial and industrial buyers, uses which are not allowed, and those  
25 uses have existed on the property since the turn of the century. This Board accepted that information  
26 and allowed them to expand that nonconforming use to include the ABC Processing in 2009. He  
27 referenced a covenant the town required back in the 1990's when the Greystone project was developed,  
28 and that covenant details all the operations that were being conducted on the site.

29  
30 Deschenes stated they are narrowing their argument to state they are seeking an extension of the  
31 preexisting, nonconforming use on site of materials processing and retail sales to be extended to include  
32 the manufacturing of bituminous concrete and the retail sales of that material. In order to apply for  
33 this special permit they have to show that this extension will not be significantly more detrimental than  
34 what is there today.

35  
36 Morrisette reminded the Board that the court's decisions and judge's opinions are not binding on this  
37 Board, as they are not a party to that decision, the Board is free to make their own decisions. He  
38 referenced Deschenes statement that the Board has to make a finding that the proposed use is not  
39 significantly more detrimental than what is out there today. He qualified that the Board needs to make  
40 a finding that the proposed use is not significantly more detrimental than the base nonconforming use  
41 they are using as a foundation to expand, not the entire site. Deschenes indicated he was in agreement  
42 with this analysis.

43  
44 Morrisette asked the Board to consider whether the proposed activity is a change or extension of the  
45 base nonconforming use, and at what point should it be examined as an addition, or a new use entirely,  
46 versus an extension.

1 Enis asked for an explanation of the Ecosorb process. Deschenes stated the product Ecosorb provides  
2 is a natural product, biodegradable, and nonhazardous. He stated it is not a masking material, it actually  
3 absorbs the smell. It is a liquid that is added to the liquid asphalt, one gallon for every 10,000 gallons of  
4 liquid asphalt. They fully intend to utilize this material to eliminate any possible odors from the plant.  
5 Rick DeFelice, Newport Materials, stated the manufacturers will come out and do an independent study  
6 on the property and if it needs to be tweaked to increase success this will happen.

7  
8 A Board member asked if the applicant is going to accept all the recommendations made by MDM in  
9 the traffic study. Deschenes indicated yes, they have made a commitment to the Planning Board that  
10 they are accepting of the recommendations of the town's peer reviewer. They have also agreed to limit  
11 the activity to no more than 250 vehicle trips a day.

12  
13 Deschenes addressed the Variance they are seeking relative to sound limitation. He stated the court  
14 concluded the sound levels on the property boundaries must meet criteria that they cannot create the  
15 lesser of 70 dB of sound, or cannot increase the ambient sound by more than 10 dB. The ambient  
16 sound measured on the site is 43 dB, which allows them to go to 53. They cannot have more than  
17 70 dB at the boundary line and they are at 75 dB. This variance is requesting the Board to allow the  
18 project to be 75 dB at the western boundary line.

19  
20 Deschenes stated that staff report, which he takes exception to, states that this is not really a  
21 dimensional variance but a use variance. He stated they are not seeking a use variance, they are asking  
22 for a variance from that number requirement to allow 75dB, a dimensional type variance.

23  
24 Morrisette stated he agrees they can apply for this variance based upon an alert from the judge,  
25 however, they are asking for relief from the definition of light manufacturing, one of the component  
26 pieces to what qualifies as light manufacturing. The judge has indicated if they do not provide the  
27 sound attenuation then the proposed use no longer meets all the criteria such that it can be defined as  
28 light manufacturing. He stated if the Planning Board waives any of the sound attenuation the proposed  
29 use is not allowed because it does not qualify as light manufacturing. He stated they are looking to get  
30 permission to do something that would not be allowed by right under the zoning bylaw in that district.  
31 He stated seeking variance relief for a use that is not allowed by right under the bylaw is effectively a  
32 use variance.

33  
34 Deschenes stated he is asking for a variance with respect to one aspect of light manufacturing, which is  
35 the numerical quiet. He indicated he is asking the Board to look at a dimension aspect of the project  
36 and allow them to waive it.

37  
38 Herrmann asked if the Planning Board does not waive the sound attenuation requirement and the  
39 applicant has to build a wall does the applicant have the legal right to come to the Zoning Board to  
40 request a variance from building the wall. Morrisette stated he is not disputing that, he is disputing the  
41 fact that the applicant filed under the definition section of light manufacturing. Deschenes stated there  
42 is a dimensional requirement of meeting a certain sound level on one boundary and he is asking for a  
43 variance from that one dimensional requirement.

44  
45 Herrmann stated he would take a few questions or comments from the audience. He asked that they  
46 not be repeat questions from their previous meeting.

1  
2 Carol Savoy, Russell's Way – She stated she agrees they signed a covenant about the quarry and the  
3 quarrying activities. Nowhere in the convenient was it stated that an asphalt plant could go in. If that  
4 were stated she would not have purchased her house. She walked the property before any houses were  
5 built to see what the quarry was like and to determine if she wanted to live there. She stated it was  
6 quiet, peaceful, and there were no problems. She stated in her opinion the asphalt plant is going to be a  
7 problem, will decrease the value of her home, and affect the quality of her living.  
8

9 Marie Burnham, 255 Groton Road, N. Chelmsford – She submitted letters to be entered into the  
10 record. She asked if the variance is granted will it allow the applicant to do whatever they want up to  
11 75 dB. Herrmann stated absolutely not, the variance would be boundary specific. He stated they are  
12 under the criteria for all the other borders.  
13

14 Kevin Jansen, 57 Oak Hill Road – He stated he feels the traffic will be detrimental. He travels Oak Hill  
15 Road to Route 40 every day. He stated any truck pulling out of the site road would cause a log jam  
16 back to Oak Hill Road. Herrmann stated two different firms have concluded that the trucks will not  
17 impede the traffic flow any worse than they are now. They are not addressing the intersection, which  
18 he agrees is horrible, but it has nothing to do with the operation at 540 Groton Road. Jansen stated all  
19 it takes is one truck coming out and having to gear up to try to get out to Route 3 and this slows  
20 everyone down.  
21

22 Cheryl Freedman, Scotty Hollow Drive, N. Chelmsford – She stated the world does not end at the  
23 border or Route 3 and there are a lot of people in Chelmsford near the site. Scotty Hollow  
24 condominiums in particular is a large community that would be affected by this plant. She opposes the  
25 plant. She advised the Board there are a lot of people out in the hallway that they cannot see.  
26

27 Jocelyn Bishop, 270 Groton Road – She stated she lives on the primary road where the operation will  
28 potentially exist, she also has children at Westford Children's Learning Center, and she has a cottage at  
29 Summer Village. She is pro-business and pro-commerce, but is concerned with the potential for  
30 additional noise. She stated Groton Road is already very noisy, substantially noisier than it was ten  
31 years ago. She is extremely concerned this will negatively impact her life, the life of her family, and  
32 other people who live on Groton Road. She expressed concern with the potential for pollution,  
33 especially with the Westford Children's Learning Center being so close, and other neighborhoods. She  
34 stated she commutes to Boston daily and often there are trucks that pull out aggressively in front of  
35 her. The additional traffic will negatively impact that situation and add additional danger and harm to  
36 the area.  
37

38 Martin Corbett, 7 Danley Drive – He stated the west side variance for the sound is not a difference  
39 from 70 dB to 75 dB, they are also not allowed to go greater than 10 dB over what is currently there,  
40 which is 43 dB, so this is a 22 dB difference, not a 5 dB difference. A 22 dB difference is 128  
41 amplification in sound model. He stated the restriction to go left is only for trucks leaving, which  
42 means all other trucks arriving can come through the center of Westford, go through the Oak Hill  
43 intersection area, and there is no provision to ensure there is no problem caused by those trucks  
44 entering the property. He asked why Newport Materials needs enough build capacity for close to three  
45 times the amount required to support 250 trucks of asphalt. He stated based on discussion at a  
46 Planning Board meeting 37 trucks would be accessing the site during primary traffic hour. He stated

1 that is the bigger number, not the 250 per day, the 37 during the prime traffic hours. He stated he has  
2 never gone past a construction site on the highway and not smelled asphalt. He referenced the  
3 multiuse conforming to neighborhood character and asked what the definition of neighborhood is. He  
4 stated the covenant document referenced is not greater than 17 years old and cannot be used to  
5 compare against the zoning bylaws because it does not predate the zoning bylaws.

6  
7 Wendy Welsh, 11 Edwards Ave – She indicated where the Miller School and the Children’s Learning  
8 Center are in relation to the plant. She stated this is less than a mile. She stated when she thinks of the  
9 sound from a quarry she thinks loud, so 10 dB above loud cannot be quiet. She stated she has battled  
10 cancer and is nervous about chemicals. She is concerned about the Ecosorb. She asked if they can  
11 guarantee there will be no hydrogen sulfide, chromium, formaldehyde, cadmium, arsenic, or toxins in  
12 the air.

13  
14 Deschenes stated they received a clean air permit from the DEP which limits what they are allowed to  
15 exhaust. Requirements put into the plant, partially in response to a Chelmsford abutters group appeal  
16 of the permit, will make the plant the cleanest plant in Massachusetts. As part of the Planning Board  
17 process they conducted a health risk assessment study which concluded the plant would not have any  
18 health risk to the abutters. This study was peer reviewed by the town and it was concluded that there  
19 would be no health risks generated by this plant.

20  
21 Welsh cited health problems reported within a two mile radius of other, much smaller, asphalt plants.  
22 She asked the Board not to approve this. If it is approved she would like the applicant to pay for an  
23 environmental study to have a baseline of the air quality prior to construction of the plant.

24  
25 Mary Yao, Cobblestone Lane – She stated in Chelmsford on 16 Oak Street is Aggregated Industries.  
26 They are a large supplier of asphalt and assorted aggregates. This is 3.5 miles away on a map, by major  
27 roads 7.2 miles away, and by going through the town it is 6.2 miles away. She asked why they need two  
28 large asphalt plants within 3.5 miles of each other. She questioned the economic need for this plant.  
29 She expressed concern that this might be the safest plant that can be built, however, they cannot  
30 control the trucks coming and going from the site. She stated if bitumen or asphalt falls in a wetland it  
31 is an ecological disaster. She stated this is significantly more dangerous than what is going on now.

32  
33 Alisa Nakashian, Betty Lane – She expressed concern that the concept Ecosorb will be used to mask an  
34 odor that is supposed to alert danger. She does not think any concept of using any agent that  
35 neutralizes an odor should be considered. She stated the bylaws are very clear, light manufacturing  
36 means no foul odors. She stated the suggestion that this applicant wants to use Ecosorb to eliminate  
37 the odor is proof in and of itself that this is not a light manufacturing use. She asked how the town  
38 proposes to enforce such a use. She has looked at the conditions of many permits granted in this town  
39 and found violations. She stated the gas station across the street from her is not supposed to charge  
40 for air for tires, however, they do. She stated if the town cannot regulate being charged for air in a tire  
41 how are they going to regulate whether chemicals are used to eliminate the odor of more chemicals in  
42 this town. She stated this is not what the residents want.

43  
44 Nakashian expressed concern that the traffic peer reviewer did not review the data files or the amount  
45 of detail they should have. She strongly disagrees there will be no impact to traffic on Route 40. She  
46 stated she has requested the data files as of yesterday and asked that the Board not close this hearing

1 and vote before the public has had an opportunity to adequately represent themselves in studying this  
2 data. She expressed concern with the bursts of trucks carrying hot material that needs to be delivered  
3 quickly. She stated there will be a truck in that driveway every minute of the hour during peak traffic.  
4 She asked the Board to deny this.

5  
6 Jason, Greystone – He stated there are 115 asphalt plants in Massachusetts. He researched the property  
7 values in a two mile radius and in each instance the property values dropped. He stated he does not see  
8 how the asphalt plant is going to help the property values and economy in Westford. He stated having  
9 tanks of chemicals on the site is not the same safety level as the current quarry business. He does not  
10 think Westford will continue to be in the top ten communities to live in once an asphalt plant is built.

11  
12 Aisha Iyer, 10 Danley Drive – She asked what kind of Ecosorb they plan to use. Looking at the  
13 material safety data sheet for Ecosorb it states it may irritate skin and eyes, contains materials which  
14 causes moderate skin irritation. Prolonged exposure can cause dermatitis. The product can cause skin  
15 sensitization and allergic skin reactions which may be severe in certain individuals. It can also contain  
16 materials irritating to the eyes and can include blurred vision, burning sensation, and tearing.

17  
18 Deschenes stated they are being accused of hiding something because they volunteered to use this  
19 material. He stated the material they are planning to use is on record with this Board and they will be  
20 happy to submit additional information through the Planning Board process. Iyer asked if the air  
21 quality study included the trucks. Deschenes stated the study took in everything required under the  
22 law.

23  
24 Fitzgerald asked how frequently the DEP inspections occur. DeFelice stated the first inspection is 120  
25 days after operation begins. He was unsure about subsequent inspections and stated he would have to  
26 reference the permit.

27  
28 *Motion made by MacKay to close the public hearing. Motion seconded by MacMillan. The motion passed unanimously.*

29  
30 Herrmann stated he would like to take action on the application for Special Permit to allow for multiple  
31 principal uses on the lot. Morrisette stated that staff recommends the Board have benefit of draft  
32 decision language before taking a vote. Herrmann stated whatever action taken tonight will not be  
33 finalized because it will have to be reduced to writing for review at the Board's next meeting.

34  
35 Enis asked why the Board would not wait to vote until they have the draft decision. Morrisette stated  
36 the Board does not have to take final action at this meeting, they could wait for benefit of a draft  
37 decision. Herrmann stated final decision will be next month when they have had a chance to review  
38 the decision. Morrisette stated the Board does not have to take action, but does need to give staff  
39 direction as to whether the Board would like to see a draft decision for approvals or denials.

40  
41 An audience member approached the microphone to comment. Herrmann stated he is welcome to  
42 comment, but these comments will not be part of the record because the public hearing is closed. The  
43 audience member advised the Board there were more comments from the audience but there was no  
44 time to make those comments.

1 *Motion made by MacKay to approve a Special Permit to allow for multiple preexisting nonconforming uses on a single lot.*  
2 *Motion seconded by MacMillan. The motion failed by a 3-2-0 vote. (Yes: Fitzgerald, MacKay, Herrmann)*  
3 *(No: MacMillan, Enis).*

4  
5 An audience member stated she realized the hearing is closed, but asked for the benefit of the audience,  
6 should the Board approve this next variance does this mean they are eliminating one of the issues on  
7 which the town litigated and defended and spent \$330,000 of taxpayer dollars, with a unanimous vote at  
8 Town Meeting, to fight against this in Land Court on the basis of sound. She asked, if this is passed is  
9 the Board chopping of their legs with that litigation.

10  
11 Deschenes objected to these comments as the public hearing is closed. Herrmann stated these  
12 comments are not germane to what the Board is doing now. MacKay stated that is not the variance the  
13 Board is voting on. Herrmann stated he cannot have back and forth comments because the public  
14 hearing is closed.

15  
16 *Motion made by MacKay to approve a Variance per Section 3.1.1 to allow for an additional principal use on the lot.*  
17 *Motion seconded by MacMillan. The motion failed by a 3-2-0 vote. (Yes: MacKay, Enis, Herrmann)*  
18 *(No: Fitzgerald, MacMillan).*

19  
20 Herrmann stated he saw no reason to move onto the sound. Deschenes asked why not. Herrmann  
21 stated did not have a problem with it.

22  
23 Herrmann clarified the applicant is seeking to increase the dB on the westerly property lot line from 70  
24 to 75. Deschenes stated yes. Audience members stated it is 53 dB to 75 dB. Deschenes stated there  
25 are two components, one is that is cannot be more than 53 dB above ambient, they are at 43, and the  
26 second part is it cannot be more than 70 dB. He stated they are essentially asking for a variance to  
27 allow their sound level to be 75 dB at that boundary line.

28  
29 Herrmann admonished the audience for speaking out.

30  
31 *Motion made by MacKay to approve a Variance to allow the dB level to be 75 on the westerly property line. Motion*  
32 *seconded by Fitzgerald. Mr. Fitzgerald, Mr. MacKay, Mr. MacMillan, Mr. Enis, and Mr. Herrmann voted*  
33 *unanimously to approve.*

### 34 35 **Non-Public Hearing Items:**

36  
37 Herrmann stated he would like the Board to vote on the petition article of the Annual Town Meeting  
38 regarding how Board's prepare their agendas.

39  
40 Morrisette stated this article will propose a significant hardship, particularly to many of the volunteer  
41 boards that do not have any formal staff support. It is going to place an undue burden on them in  
42 terms of minute taking. The amount of detail that will be required to be incorporated into minutes will  
43 double or triple the length of minutes and will add to staff time to prepare and review minutes. He  
44 stated in his opinion this will increase liability as it will not allow the Chairman to run the meeting as  
45 they are supposed to, will be contrary to the public hearing process, and will allow anyone to come and  
46 interrupt the process, even if a public hearing is closed, and force themselves upon the Board.

1 *Motion made by MacKay not to support this article. Motion seconded by MacMillan. The motion passed unanimously.*

2  
3 Morrisette stated with respect to the Variance petition for multiple principal uses on a lot, the Board  
4 has a deadline of April 15 to issue the decision. Herrmann stated they will have to schedule a special  
5 meeting to approve the decisions. Morrisette stated he will send the members an email with potential  
6 dates for this meeting.

7  
8 *Motion made to adjourn. Motion seconded and carried unanimously.*

9  
10 **List of Documents and Other Items Used at the Meeting**



**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
Westford, Massachusetts 01886  
Phone (978) 692-5524 Fax (978) 399-2558

**MEETING MINUTES  
Tuesday, March 31, 2015, 7:00 p.m.  
Blanchard School Cafeteria  
14 West Street, Westford, MA**

**Board Members Present:** Bob Herrmann, David Earl, Jay Enis, Scott Fitzgerald, James Kazeniac, Scott MacKay, Paul MacMillan

**Not Present:** Mark Conlon

**Staff Members Present:** Chris Kluchman, AICP; Jeff Morrisette, Town Planner; Jonathan Silverstein, Town Counsel

Herrmann opened the meeting.

**Acceptance of Minutes:**

February 25, 2015 – *Motion made by MacKay to approve the minutes as submitted. Motion seconded by Fitzgerald. The motion passed unanimously.*

March 18, 2015 – Douglas Deschenes questioned why the minutes did not reflect public comments made after the Board closed its public hearing regarding 20 Commerce Way, Newport Materials LLC and 540 Groton Road LLC. Morrisette indicated minutes are not a verbatim transcript, however, it would be up to the Board whether they would like to amend the minutes. MacKay expressed an interest in including these comments within the minutes. It was decided to amend the minutes and postpone voting until the Board's next meeting.

**BOA 1501 SP (2) – 20 Commerce Way (also known as 540 Groton Road),  
Newport Materials LLC and 540 Groton Road LLC**

Herrmann stated there has been a request by the applicant to reopen the public hearing, as well as a request for reconsideration. He asked Town Counsel if the Board reopens the public hearing what happens to the existing votes.

Jonathan Silverstein, Town Counsel, addressed the Board. He stated if the Board chooses to reopen the public hearing presumably it has made a determination it wants to reconsider the existing votes and the Board believes it has additional information it did not have when it made the previous vote. He stated reopening the public hearing would not automatically set aside the previous vote. He recommended if the Board feels it wants to reconsider its prior vote that it first vote whether or not to reconsider, at that point the Board could have renewed deliberations based on the existing record or take a second vote to reopen the public hearing, consider new evidence, and proceed in the normal course.

1 Silverstein noted that the Board could not take in new evidence tonight because this meeting has not  
2 been posted as a public hearing. A vote to reconsider based on the existing record would not have  
3 those same procedural requirements. He stated with respect to the variance there would be a timing  
4 issue since the statute requires action within 100 days of the application.

5  
6 Herrmann noted that in the Board's packet of information there was new information. He stated there  
7 was a two page letter from Attorney Reilly, a two page letter from Attorney Deschenes, and a statement  
8 from Attorney Deschenes granting an extension on the special permit. Silverstein noted that the  
9 extension on the special permit is not needed as the Board has 90 days from the close of the public  
10 hearing.

11  
12 Kluchman indicated if the Board chooses to reopen the public hearing and they notify the newspaper  
13 tomorrow the notice would be published on April 2 and 9, with the earliest public hearing date being  
14 April 16. She stated the variance expires on the close of business on April 15.

15  
16 *Motion made by MacKay to reopen the public hearing, subject to the applicant giving the Board an extension needed for*  
17 *the April 16 date. Motion seconded by Fitzgerald. The motion passed by a 3-2-0 vote (Enis and MacMillan opposed).*  
18

19 Earl asked whether the vote to reopen the public hearing requires a supermajority. Silverstein indicated  
20 the vote to reopen does not require a supermajority but the ultimate vote taken by the Board would  
21 require a supermajority. Enis expressed confusion on the basis for reopening the hearing. MacKay  
22 expressed that it was unreasonable for the Board to be expected to review a 200 page document it  
23 received one night prior to this meeting. Herrmann indicated it was reopened because new information  
24 was contained in the Board's packet.

25  
26 Kluchman clarified that the letters received from both attorneys were not new information. Attorney  
27 Reilly's letter was a complaint relative to excessive executive sessions and Deschenes letter was a  
28 request to reopen and reconsider. She stated the 200 page packet was all information the Board had  
29 already reviewed during the course of the hearing.

30  
31 Herrmann stated he feels the applicant has the right to be heard relative to concerns raised. Deschenes  
32 indicated they are willing to grant an extension through the end of April, or longer if necessary.  
33 Discussion was held regarding possible dates and venues available to continue the hearing.

34  
35 Earl stated that the letter from Attorney Reilly is a complaint regarding excessive executive sessions,  
36 however, to his knowledge the Board has only had one executive session, which could not be  
37 considered excessive. He stated Attorney Deschenes' letter contains a complaint about the Board's last  
38 meeting and he does not see how this can be considered new information to this Board to make a  
39 decision. He stated he is struggling as a Board member to see where there is new information.

40  
41 Herrmann stated the prior meeting was very hectic and there were people out in the hall that did not  
42 have an opportunity to speak. Earl stated even though he was not present at that meeting he is sure the  
43 applicant must have had an opportunity to present their case, as they were not outside in the hallway.  
44 He stated it is a stretch to say there is new information to come before this Board.

1 Morrisette asked the applicant if their willingness to provide an extension of time applies to all three  
2 petitions. Deschenes responded that this is correct. Morrisette asked that Mr. Herrmann confirm that  
3 Mr. Fitzgerald is sitting in on tonight's hearing because he was present at the last meeting. He stated  
4 that they did not receive a Mullen form from Mr. Kazeniac. Mr. Herrmann stated that Kazeniac is not  
5 sitting in on this hearing. Members sitting in on the hearing are MacKay, Enis, Fitzgerald, MacMillan,  
6 and Herrmann.

7  
8 A member of the audience asked to speak. Herrmann approved, but indicated this would not be part  
9 of the public hearing record. The audience member asked that the Board require the applicant to  
10 provide to the public detailed traffic analysis data which has been denied to date. She stated they have  
11 reviewed the studies conducted, but they believe the data provided for those studies is flawed. They  
12 want the true data.

13  
14 Herrmann asked if the Board has the legal authority to require the applicant to turn over their data.  
15 Silverstein stated the town peer reviewer was satisfied with the data provided, however, the Board has  
16 the authority to request the data used to create the traffic models. Morrisette stated the public is  
17 requesting the electronic files so they can conduct their own studies. The audience member stated they  
18 were provided this information in 2009 when they requested it and she finds it odd that they are not  
19 being allowed to access this information now.

20  
21 Deschenes stated the reports they have provided in detail all the traffic counts and relevant information  
22 and the town's peer reviewer verified the analysis and submitted a report to the town. He stated they  
23 will not provide their electronic data files.

24  
25 The audience member reiterated her concern that the applicant is unwilling to release this information.

26  
27 *Motion made to adjourn. Motion seconded and carried unanimously.*

28  
29 **List of Documents and Other Items Used at the Meeting**



**TOWN OF WESTFORD  
ZONING BOARD OF APPEALS**

55 Main Street  
Westford, Massachusetts 01886  
Phone (978) 692-5524 Fax (978) 399-2558

5

**MEETING MINUTES**

**Wednesday, April 15, 2015, 7:00 p.m.**

**Town Hall, Meeting Room 201**

**55 Main Street, Westford, MA**

**Board Members Present:** Scott MacKay, Jay Enis, Paul MacMillan, David Earl

**Not Present:** Bob Herrmann, James Kazeniak, Scott Fitzgerald, Mark Conlon

**Staff Members Present:** Jeff Morrisette, Town Planner

MacKay opened the meeting.

**Acceptance of Minutes:**

February 25, 2015 – *By consensus, the Board agreed to take action on these minutes at a future meeting when more members could be present.*

January 21, 2015 – *By consensus, the Board agreed to take action on these minutes at a future meeting when more members could be present.*

**Public Hearings:**

**BOA 1505 VAR – 42 Stony Brook Road**

*Public hearing for Adam and Megan Sears to request a Variance from Appendix C - Table of Dimensional and Density Regulations of the Westford Zoning Bylaw (and any other permit relief as may be required under the Westford Zoning Bylaw) to construct a front porch that would be located 46.4 feet from the front lot line where 50 feet is required. The property is identified as Assessor Map 032 Parcel 0026 Lot 0000 and is within the Residence A Zoning District.*

MacKay designated David Earl to sit in on this hearing.

*Motion made by Earl to open the public hearing. Motion seconded by Enis. The motion passed unanimously.*

*Motion made by Earl to waive the entire reading of the public hearing notice. Motion seconded by Enis. The motion passed unanimously.*

Adam Sears, the Applicant, addressed the Board. He stated they are requesting a Variance for a front porch within 46.4 feet of the front property line, where 50 feet is required. Town Planner Morrisette advised the Applicant that there were only four Board members present, and that a unanimous vote of the Board would be required in order for the petition to be approved. Morrisette questioned whether the Applicant would like to proceed, or postpone to another meeting when the full five-member Board might be present. Mr. Sears stated that he would like to proceed. He reviewed the plans. They

1 propose to build a 6-foot wide porch addition to the front of the existing dwelling as shown on the  
2 Proposed Plot Plan.

3  
4 The Board had no questions for the Applicant.

5  
6 There was no one present to speak in favor of, or opposition to, this request.

7  
8 *Motion made by Earl to close the public hearing. Motion seconded by MacMillan. The motion passed unanimously.*

9  
10 *Motion made by Earl to approve Variance from Appendix C – Table of Dimensional and Density Regulations of the*  
11 *Westford Zoning Bylaw to construct a front porch to within 46 feet of the front lot line whereas 50 feet is required.*  
12 *Motion seconded by MacMillan. Mr. MacMillan, Mr. Enis, Mr. MacKay, and Mr. Earl voted unanimously to*  
13 *approve.*

14  
15 MacKay stated Morrisette has 14 days to write the decision. It then has to be registered with the  
16 Town Clerk, and recorded with the Registry of Deeds after the 20-day appeal period.

17  
18 **Non-Public Hearing Items:**

19  
20 *Cottages in the Woods. Morrisette stated that there are no updates to report, and will continue to keep this as a*  
21 *placeholder agenda item until such time as the remaining improvements are completed.*

22  
23 *Motion made by Enis to adjourn. Motion seconded by MacMillan and carried unanimously.*

24  
25 **List of Documents and Other Items Used at the Meeting**

26  
27 1.

DESCHENES & FARRELL, P.C.

Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

April 14, 2015

Westford Zoning Board of Appeals  
Attn: Jeff Morrisette  
55 Main Street  
Westford, MA 01886

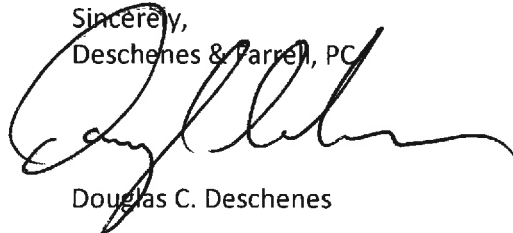
**RE: BOA 1501 SP (2) Var (2)-20 Commerce way (also known as 540 Groton Road)  
(Newport Materials LLC and 540 Groton Road)**

Dear Jeff,

As per your request, enclosed please find the abutter lists, abutter labels and postage in support of re-opening the Zoning Board of Appeals public hearing. I have also attached the Third Party Billing Form to pay for publication of the legal notices in the local newspaper.

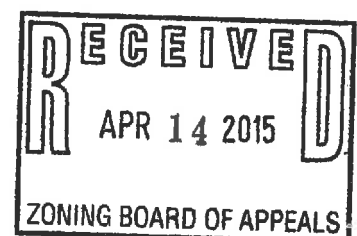
Thank you for your time and consideration in this matter.

Sincerely,  
Deschenes & Farrell, PC



Douglas C. Deschenes

DCD/cas  
Enclosures





File Number: BOA 1501 SP VAR  
20 Commerce Way (also known as 540 Groton Road)  
Newport Materials

Town of Westford  
**Board of Appeals**

55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2732

**Public Hearing Notice and Posting**

In accordance with the provisions of MGL Chapter 40A Section 11, notice is hereby given of a public hearing to be re-opened and held by the Westford Zoning Board of Appeals **starting at approximately 7:35 p.m. on Wednesday, May 6, 2015**, at **Blanchard Middle School Auditorium**, 14 West Street in Westford, to consider an application of **540 Groton Road, LLC and Newport Materials, LLC** for the following petitions (and any other permit or relief as may be required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing facility and associated materials stockpile yard. The subject property is located at 20 Commerce Way (also known as 540 Groton Road) and identified as Assessor's Map 048 Parcel 0011 Lot 0234 and within the Industrial A Zoning District.

- Variance under Section 3.1.1 to allow an additional principal use on the lot.
- Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light Manufacturing.
- Special Permit under Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.

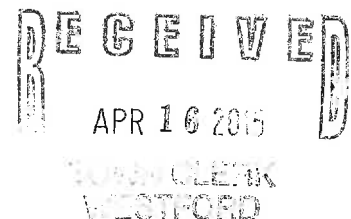
The above-listed petitions are related to a recent Decision issued by Land Court (10 MISC 429867). Materials related to these applications and the Land Court decisions can be found on the Planning Board's Web Page under the tab "Asphalt Plant" at:

[http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA\\_planning/index](http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/index)

A copy of the application, **file number BOA 1501 SP (1) VAR (2)** and accompanying information may also be viewed at the Permitting Office located on the second floor of Town Hall, 55 Main Street during normal business hours (8:00 a.m. to 4:00 p.m.).

Any person interested or wishing to be heard on the application(s) should appear at the time and place designated, or submit written correspondence to the Board of Appeals. All written comments received prior to the close of the public hearing will be included in the written record for this application. Email correspondence should be sent to [jmorrisette@westfordma.gov](mailto:jmorrisette@westfordma.gov)

Robert Herrmann, Chair  
Westford Board of Appeals



File Number: BOA 1501 SP VAR  
20 Commerce Way (also known as 540 Groton Road)  
Newport Materials

PLEASE PLACE THIS AD IN THE **LOWELL SUN** ON:

**Wednesday, April 22, 2015**

**and**

**Wednesday, April 29, 2015**

PLEASE SUBMIT BILL TO:

**Douglas C. Deschenes  
Deschenes & Farrell, P.C.  
515 Groton Rd, Suite 204  
Westford, MA 01886  
(978) 496-1177**

If you should have any questions, please contact Permitting Assistant Victoria Johnson at (978) 692-5524.



Town of Westford  
Board of Appeals

Town Hall  
55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2732

**STAFF REPORT**

Date: May 1, 2015  
To: Zoning Board of Appeals  
From: Jeffrey Morrisette, Town Planner  
Meeting: May 6, 2015  
Re: BOA 1501 SP VAR VAR – 540 Groton Road (also known as 20 Commerce Road)

**PROJECT INFORMATION**

**Property Owner:** 540 Groton Road, LLC & Newport Materials, LLC  
**Applicant:** Richard DeFelice  
**Agent:** Douglas C. Deschenes, Attorney  
**Site Address:** 540 Groton Road  
**Map and Parcel:** Map 048 Parcel 0011, Lots 0234, 0248 & 0249  
**Lot Size:** 115 acres +/-  
**Requested Actions:**  
1. Variance per Section 3.1.1 to allow an additional principal use on the lot;  
2. Variance under Section 10.2 regarding the term “quiet” within the definition of Light Manufacturing;  
3. Special Permit per Section 9.3 pursuant to Section 3.1 to allow for multiple principal uses on the site; (*Withdrawn by Applicant*)  
4. Special Permit per Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.  
**Zoning District:** Industrial A (IA)  
**Surrounding Zoning & Uses:** Industrial A, Concrete Plant, Fletcher Quarry, Conservation land  
**Decision Deadline:** 90 Days after close of public hearing

**Summary:**

**February 25, 2015:**

The Zoning Board of Appeals Meeting (Board) opened a public hearing to discuss three (3) concurrent petitions relating to the proposed Asphalt Plant to be located at 540 Groton Road. (*The Applicant withdrew one of four initial petition requests, specifically BOA 1501 C, which sought Special Permit relief under Section 9.3 of the Zoning Bylaw to allow for multiple principal uses on the lot.*) During said meeting, the Board received testimony from both the Applicant and the public. The Board requested that the Applicant provide additional information relating to traffic and noise, and continued the public hearing to March 18, 2015.

**March 18, 2015:**

The Applicant indicated that they would no longer pursue the approach of asserting the number of principal uses as a base nonconforming use to extend via Special Permit. The Board received additional testimony from the Applicant and the public. The Board closed the public hearing. The Board deliberated and voted on the three petitions as follows:

**BOA 1501 A:**

*Variance under Section 3.1.1 of the Zoning Bylaw to allow an additional principal use on the lot.*

The Board voted 3-2-0 to approve, thereby **DENYING** the petition for lack of attaining a supermajority.

**BOA 1501 B:**

*Variance under Section 10.2 of the Zoning Bylaw regarding the term “quiet” within the definition of Light Manufacturing.*

The Board voted 5-0-0 to **APPROVE** the petition.

**BOA 1501 D:**

*Special Permit pursuant to Section 3.6.2 of the Zoning Bylaw for the extension of a pre-existing nonconforming use on a single lot.*

The Board voted 3-2-0 to approve, thereby **DENYING** the petition for lack of attaining a supermajority.

Staff advised the Board, and the Board agreed, to schedule a Special Meeting, (held on March 31, 2015) to review draft decisions.

**March 31, 2015:**

The Board held a public meeting to review draft decisions and consider the March 24, 2015 request from the Applicant to reconsider their votes and to reopen the public hearing. At the meeting, the Applicant clarified that they would provide an extension of time for the Board to act on the two Variance petitions because absent such extension, there is a statutory timeframe of 100 days from the date an application is received for the Board to act. One day prior to that meeting the Applicant submitted two additional letters, one with approximately 160 pages of material. The Board voted 3-2 to reopen the public hearing on all three petitions.

**April 2015:**

Applicant's representative submitted written permission for the Board to act on the Variances by May 15, 2015. Upon receipt of postage and approval for additional legal advertisement in the newspaper, public notice was provided for a reopened BOA hearing, which was scheduled to be held on May 6, 2015.

The Planning Board closed the public hearing in their deliberations on April 14, 2015, and voted on the applications before it. The votes were as follows: Special Permit for Major Commercial Project – 1-4-0 to Approve, thereby **DENYING** the application; Special Permit for Water Resource Protection Overlay District: 5-0-0 to **APPROVE**; Site Plan Review: 4-1-0 to **APPROVE**; and Stormwater Management Permit: 5-0-0 to **APPROVE**. On April 24, 2015, the Planning Board decisions were recorded with the Town Clerk and submitted to the Land Court in accordance with the Land Court decision (Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867).

**May 6, 2015 Zoning Board of Appeals Packet Materials**

1. Board of Appeals Agenda
2. Minutes
3. Public Hearing Notice and abutter list, April 14, 2015, letter from Douglas Deschenes
4. May 1, 2015 Staff Report
5. April 8, 2015, letter from Richard DeFelice, Newport Materials
6. April 8, 2015, letter from Attorney Thomas Reilly for Newport Materials regarding the Planning Board's Issues for Consideration
7. April 1, 2015, letter from Attorney Douglas Deschenes authorizing the Board to act on the Variances until May 15, 2015

8. March 30, 2015, letter from Attorney Thomas Reilly for Newport Materials concerning executive sessions
9. March 30, 2015, letter from Attorney Thomas Reilly for Newport Materials, (attachments were provided to the Board on March 30, 2015 and are not included in the May 6, 2015 packet)
  - a. January 6, 2015 Order from Land Court 10 MISC 429867 (AHS)
  - b. Letter not in opposition to the project from abutting property owner
  - c. March 10, 2015 Letter and report from Cavanaugh Tocci and Associates (CTA)
  - d. Affidavit from Richard Defelice
  - e. January 5, 2015, application materials
  - f. Undated letter from Gencor about power source
  - g. Affidavit from Keith Harper about power source
  - h. February 20, 2015, Transportation Impact Analysis, Vanasse & Associates
  - i. March 11, 2015, letter from MDM Peer review of VAI TIAS
10. Revised Plans prepared by LandTech Consultants last revised March 26, 2015
11. March 24, 2015, letter from Attorney Douglas Deschenes requesting that the Board reconsider their vote and reopen the public hearing
12. Public correspondence received from March 31, 2015 to April 29, 2015
13. Planning board Decisions

**BOA 1501 A:**

**Variance under Section 3.1.1 of the Zoning Bylaw to allow an additional principal use on the lot.**

The Applicant seeks permission to allow an additional principal use (asphalt manufacturing facility) on the lot. The Applicant is under Court Order to submit this petition.

**Staff Comments:**

Staff maintains that a Variance petition (as directed by Land Court) is the proper mechanism to secure the requested relief instead of the Special Permit requested under BOA 1501 D.

**Per §9.2.2.2 Variance.**

*"[The Board of Appeal's powers include...] To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10, where owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. A use variance may be granted by the Board of Appeals to authorize a use or activity not otherwise permitted in the district in which the land or structure is located."*

**Variance Criteria:**

*MGL C.40A §10 requires that the grant of a variance be made only when the Board of Appeals finds the following three "Required Findings" have been reached in the affirmative. The Board must reach affirmative conclusions for all three findings.*

- *Required Finding #1: Soil conditions, shape or topography*
- *Required Finding #2: Hardship*
- *Required Finding #3: Public Good*

**BOA 1501 B:**

**Variance under Section 10.2 of the Zoning Bylaw regarding the term “quiet” within the definition of Light Manufacturing.**

The petitioner is not under Court Order to submit this petition. However, Staff acknowledges that the LC Decision indicates that such a petition would be required if the Planning Board were to waive noise attenuation requirements. (Refer to page 29 of the LC Decision, including footnote 39.)

**Staff Comments:**

The Planning Board did NOT waive construction of the sound attenuation barrier and denied the Special Permit for Major Commercial Project (SP MCP). Therefore, Staff maintains that this petition is not ripe for consideration. This petition was predicated on the assumption that the Planning Board waived construction (in whole or in part) of the required sound barriers.

**Per §9.2.2.2 Variance.**

*“[The Board of Appeal’s powers include...] To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10, where owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. A use variance may be granted by the Board of Appeals to authorize a use or activity not otherwise permitted in the district in which the land or structure is located.”*

**Variance Criteria:**

*MGL C.40A §10 requires that the grant of a variance be made only when the Board of Appeals finds the following three “Required Findings” have been reached in the affirmative. The Board must reach affirmative conclusions for all three findings.*

- *Required Finding #1: Soil conditions, shape or topography*
- *Required Finding #2: Hardship*
- *Required Finding #3: Public Good*

**BOA 1501 C:**

**Special Permit under Section 9.3 pursuant to Section 3.1 of the Zoning Bylaw to allow for multiple principal uses on the lot.**

The Applicant withdrew this petition. No further comment.

**BOA 1501 D:**

**Special Permit pursuant to Section 3.6.2 of the Zoning Bylaw for the extension of a pre-existing nonconforming use on a single lot.**

The Applicant seeks Special Permit relief to allow for the extension of pre-existing nonconforming use (retail, general service establishment) on a single lot. The Applicant is not under Court Order to submit this petition.

**Staff Comments:**

Staff has a number of concerns with this petition, and asks that the Board consider the following:

Section 3.6.2 of the Zoning Bylaw authorizes the Board to grant a Special Permit to change a nonconforming use. Specifically the Board may consider the following types of changes to nonconforming uses:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use.

Staff is of the opinion that this petition is inconsistent with the intent of Section 3.6.2 of the Bylaw, which permits the change or extension of a nonconforming use, rather than the addition of other uses. In this case, the request to change or substantially extend an existing nonconforming use appears to be a request to add a new use. The Applicant has explicitly argued that the asphalt plant is a totally separate use, as in Attorney Reilly's April 8, 2015 letter:

"Planning Staff's attempt to couple the Project (i.e. the asphalt plant) to the pre-existing crushing operation is an underhanded attempt to avoid the conclusion of the Town's own consultant. Moreover, Planning Staff's conclusion that the "two uses are physically and procedurally tied together" is flat out wrong."

Alternatively, prior to acting on the Special Permit request, Staff recommends that the Applicant document in writing how the proposed facility is either a change or extension of an existing nonconforming use on the lot. The Applicant should also provide written verification that the nonconforming use predated the adoption of the Zoning Bylaw and has been maintained continuously to the present day.

Special Permit Criteria:

*Prior to granting approval for this petition, the Board must first make a determination that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.*

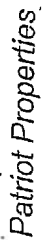
STAFF RECOMMENDATIONS:

1. Should the Board determine that it has sufficient information to act on the petitions, Staff advises the Board close the public hearing(s), provide guidance to Staff, and schedule a meeting to review draft decisions before taking final action. As of the date of this staff report, the Applicant has extended the timeframe for action on the two Variance petitions until May 15, 2015. This means that any decisions must be submitted to the Town Clerk on or before May 15, 2015.
2. Given that these petitions relate ongoing litigation, Staff strongly recommends that the Board have benefit of review by Town Counsel prior to submitting decisions to the Town Clerk.
3. Staff recommends that the Board act on each petition separately, and in their deliberations make clear how the petitions either meet or do not meet the applicable criteria cited above in this staff report.

NOTE:

1. Granting approval for any of the various petitions by the Zoning Board of Appeals does not obviate the requirement for a Special Permit for a Major Commercial Development from the Planning Board.

cc: Building Commissioner  
Applicant



8:51:04AM

# Westford

## Abutters List

**Filter Used:**  
DataProperty.ParcelID = '046 0011 0246' OR DataProperty.ParcelID = '046 0013 0000' OR DataProperty.ParcelID = '046 0014 0000' OR  
DataProperty.ParcelID = '046 0015 0000' OR DataProperty.ParcelID = '046 0016 0000'

300 FT ABUTTERS TO PARCEL 48-11.234

Westf. - 10 Abutters

ParcelID	Location	Owner	Co-Owner	Mailing Address	City	State	Zip
046 0011 0246	GROTON RD	STONE RIDGE INVESTMENTS, LLC	C/O DUKE POINTER	50 DEER RUN	AYER	MA	01432
046 0013 0000	520 GROTON RD	POMERLEAU BROS INC	GRANITE STATE CONCRETE	520 GROTON RD	WESTFORD	MA	01886
046 0014 0000	534 GROTON RD	GRANITE STATE CONCRETE, CO I		180 PHOENIX AVE	LOWELL	MA	01852
046 0015 0000	535 GROTON RD	NESI REALTY, LLC		15 BRANCH PIKE	SMITHFIELD	RI	02917
046 0028 0001	0 OFF GROTON RD	LEEDBERG NORMAN W	LEEDBERG HELEN M	268 GROTON RD	NORTH CHELMSFORD	MA	01863
046 0028 0002	0 OFF GROTON RD	LEEDBERG SCOTT E	LEEDBERG JUNE A	266 GROTON RD	N CHELMSFORD	MA	01863
048 0001 0000	GROTON RD	LEMASURIER STEPHEN R	LEMASURIER ANDREW	P O BOX 71	N CHELMSFORD	MA	01863
048 0011 0234	10 COMMERCE WAY	540 GROTON RD, LLC	RICK DEFELICE	145 TEMPLE STREET	NASHUA	NH	03060
048 0011 0247	RUSSELL'S WAY	TOWN OF WESTFORD	CONSERVATION COMMISSION	55 MAIN STREET	WESTFORD	MA	01886
048 0011 0250	LOT 2 COMMERCE WAY	540 GROTON RD, LLC	CATHARTES PRIVATE INVE	31 MILK ST SUITE 501	BOSTON	MA	02109

End of Report

CERTIFIED

BOARD OF ASSESSORS  
55 MAIN STREET  
WESTFORD, MA 01886

*[Signature]* 12/1/2014

**BOARD OF ASSESSORS**

Elissa F. Magnant  
John J. Duffett  
Samuel P. Chase



**Chief Assessor**  
Frank T. Reen, M.A.A

**Assistant Assessor**  
Kathryn S. Bianchi, M.A.A

**Telephone:** (978) 250-5220  
**Fax:** (978) 250-5223

**Chelmsford Town Offices**  
**Assessor's Office**  
50 Billerica Rd  
Chelmsford, MA 01824-2777  
[www.townofchelmsford.us](http://www.townofchelmsford.us)

**Administrative Assistant**  
Nancy Maher

December 16, 2014

540 Groton Rd LLC  
Groton Rd Off  
10-22-1

c/o Deschenes & Farrell PC  
Douglas C Deschenes  
515 Groton Rd Ste 204  
Westford, Ma 01886

To the best of our knowledge the attached is a list of abutters for the above parcel.

Sincerely

Nancy L Maher

Chelms - 88 Abutters

# ABUTTERS LISTING CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
11	4	12	1B	CARROLL GERALD F		E01 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E01
11	4	12	2E	MALLOY DIANE F		87A 13TH STREET	CHARLESTOWN	MA 02129-4204	SCOTTY HOLLOW DR #U-E02
11	4	12	3E	KORREY RAY LOU TRUSTEE OF	THE KORREY 1998 NOMINEE TR	E03 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E03
11	4	12	4E	MARKUNAS JANICE R TRUSTEE	JRM REALTY TRUST	E04 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E04
11	4	12	5E	SUM INVESTMENTS LLC		277 GROTON RD	WESTFORD	MA 01866	SCOTTY HOLLOW DR #U-E05
11	4	12	6E	SCHOOLEY MATTHEW &	MARIE SCHOOLEY	E06 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E06
11	4	12	7E	SULLIVAN JEROME A		E07 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E07
11	4	12	8E	ZELLEY RICHARD C TRUSTEES	OF RICHARD C ZELLEY LIVING TR	PO BOX 122	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E08
11	4	12	9E	RODDY JOANA &	GERALYN RODDY	E09 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E09
11	4	12	10E	KRIEDBERG KENNETH TRUSTEE &	JEAN SHERMAN KRIEDBERG TRUSTEE	E10 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E10
11	4	12	11E	STARACE JOHN &	JOY STARACE	E11 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E11
11	4	12	12E	DICOSTANZO DEBORAH A		E12 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E12
11	4	12	13E	HART KRALEE		E13 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E13
11	4	12	14E	BODUC JIMMY G &	JUSTINE A BODUC	E14 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E14
11	4	12	15E	ACKER LEONARD W JR		E15 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E15
11	4	12	16E	MYERS LOUISE C		E16 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E16
11	4	12	17E	GIRARD FAREN E		E17 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E17
11	4	12	18E	ORR DEBORAH L		E18 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E18
11	4	12	19E	STEVES PATRICIA J &	GARY W CLARK	E19 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E19
11	4	12	20D	REMISON WILLIAM J		E20 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E20
11	4	12	20E	KEELAN NANCY N		D20 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E21
11	4	12	21D	GAVINENI USHA &		139 PLAIN RD	WESTFORD	MA 01866	SCOTTY HOLLOW DR #U-E22
11	4	12	21E	RACE ERIN A	SHANTI YAMAGADDA	D21 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E23
11	4	12	22D	NADDEAU ERICA L &	TERESA GRECEK-NADDEAU	D22 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E24
11	4	12	22E	MORAN THOMAS E TRUSTEE	GERALD MORAN FAMILY TRUST	D23 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E25
11	4	12	23D	JUANG TOM JYH-MING &	LIBBY JUANG	19 DENNIS RD	WALTHAM	MA 02453	SCOTTY HOLLOW DR #U-E26
11	4	12	23E	CHANG CAROL J		638 SOUTH STREET APT B	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E27
11	4	12	24D	PAPPAS THERESA &	JUDE PAPPAS	E23 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E28
11	4	12	24E	MATZEIN HAROLD I &	JACLYN D MATZEIN	E24 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E29
11	4	12	25D	BARIL SUZANNE M		E25 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E30
11	4	12	25E	FREEDMAN SHERYL B		E26 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E31
11	4	12	26D	SPILLISSY DORIS R		E27 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E32
11	4	12	26E	WHITE ORCA LLC	C/O RAVESH MAHEY	D26 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E33
11	4	12	27D	NOLAN JOHN J	LOREEN NOLAN	106 DAVIS RD	ACTON	MA 01720	SCOTTY HOLLOW DR #U-E34
11	4	12	27E	LOPARDO MARK A		P O BOX 490437	EVERETT	MA 02149	SCOTTY HOLLOW DR #U-E35
11	4	12	28D	KIMANI JULIAN		D28 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E36
11	4	12	28E	BENNOIS ARON &	BENNOIS CATHLEEN S	E29 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E37
11	4	12	29D	SKOOG INGRID		D29 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E38
11	4	12	29E	PERCOTTI GREG D		E30 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E39
11	4	12	30D	KULKARNI SUSHIL &	SWATI SUSHIL KULKARNI	E31 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E40
11	4	12	30E	SEALE JOHN JR		D31 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E41
11	4	12	31D	WITTHOMBE EDWARD J JR &	CRAIG T WITTHOMBE	D32 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E42
11	4	12	31E	MACRACHEN JUAN		29 HIBISCUS WY	NASHUA	NH 03062	SCOTTY HOLLOW DR #U-E43
11	4	12	32D	SCARLEN CHRISTINE L		E32 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E44
11	4	12	32E	SRINIVAS KRITHIKA		D33 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E45
11	4	12	33D	DOVALE JENNIFER M		936 REDWOOD DRIVE	DANVILLE	CA 94506	SCOTTY HOLLOW DR #U-E46

W6

# ABBUYERS LISTING CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST	Zip	Parcel Location
11	4	12	33E	SHAH PARESH K &	META P SHAH	17 LOON WAY	WESTFORD	MA	01863	SCOTTY HOLLOW DR #U-E33
11	4	12	34D	COAN KATHARINE R &	KENNETH H COAN	D34 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-D34
11	4	12	34E	HAYWOOD FRANK M &	MARIE C SORRENTINO	E34 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E34
11	4	12	35E	CUZZIERE BARBARA		E35 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E35
11	4	12	36E	DAY MARY ANN		E36 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E36
11	4	12	37E	CALAHAN DAVID J		E37 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E37
11	4	12	38E	LAUREUX MARGARET M		E38 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E38
11	4	12	39E	PARRELL MARGARET C		E39 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E39
11	4	12	40E	SULLIVAN WILLIAM F &	ADELINE L SULLIVAN	808 3BR AVE W	BRADENTON	FL	34205	SCOTTY HOLLOW DR #U-E40
11	4	12	41E	DONLAY ROBERT	LAUREN ANNE DONLAY	E41 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E41
11	4	12	42E	NEWTON ALBERT S		E42 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E42
11	4	12	43E	GAUGHAN KAREN M		E43 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E43
11	4	12	44E	VO MINHDUC H		E44 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E44
11	4	12	45E	NINDEL MARK D	PATRICIA NINDEL	E45 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E45
11	4	12	46E	CONLOW ELIZABETH A		E46 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E46
11	4	12	47E	LEONARD MARY GAIL		E47 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E47
11	4	12	48E	BOGIN SHARON J		E48 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E48
11	4	12	49E	DEVITA NICK M		E49 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E49
11	4	12	50E	SILVA GIENNA L		E50 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E50
11	4	12	51E	GRENIER DONALD E SR &	SANDRA J GRENIER	E51 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E51
11	4	12	52E	BOON GARY K &	C/O BEVERLY WHITE	E52 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E52
11	4	12	53E	COMIER JOHN JOSEPH		E53 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E53
11	4	12	54E	BARRESI WILLIAM A &	C/O VIRENDR S WARKE	E54 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E54
11	4	12	55E	CUMPTON ADRIAN &	HANNAH CUMPTON	E55 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E55
11	4	12	56E	HILLMAN GERALD W		E56 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E56
11	4	12	57E	CORSETTI JERANNETTE		E57 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E57
11	4	12	58E	METZ PAMELA A		E58 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E58
11	4	12	59E	BOUCHER PAULA M TRUSTEE	PMB FAMILY TRUST	E59 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E59
11	4	12	60E	VAUGHAN WILLIAM H &	SHELIA ANNE VAUGHAN	E60 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E60

ABBUTTERS LISTING  
CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
10	4	1		MASSACHUSETTS	COMMONWEALTH OF	MASS HIGHWAY DEPT	BOSTON	MA 02116-3973	GROTON RD OFF
10	4	2		CONGREGATIONAL CHURCH	% CLAUDIA LEMASURIER	5 JENSEN AV	CHELMSFORD,	MA 01824	LEDGE RD OFF
10	22	1		540 GROTON ROAD LLC		31 MILK SUITE 501	BOSTON	MA 01209	GROTON RD OFF
11	4	13		CHELMSFORD TOWN OF		50 BILLERICA RD	CHELMSFORD	MA 01824	GROTON RD OFF
16	22	1		LOISELLE NANCY J TRS		7 DORIS DR, SUITE 6B	NO CHELMSFORD	MA 01863	DORIS DR
16	22	2		DONNELLY KERRIE &		263 GROTON RD	NO CHELMSFORD	MA 01863	263 GROTON RD
17	22	1		RIVARD JOSEPH P TRUSTEE	MICHAEL DONNELLY	61 WESTFORD ST	DUNSTABLE	MA 01827	1 WARD WY
17	22	2		LOISELLE RONALD J TRUSTEE	OF RIVARD FAMILY TRUST	7 DORIS DR	NO CHELMSFORD	MA 01863	7 DORIS DR
17	22	6		BURNHAM GEORGE H JR	OF DORIS DRIVE REALTY TRUST	255 GROTON RD	NO CHELMSFORD	MA 01863	255 GROTON RD
22	92	1		LEEDBERG SCOTT E &	MARIE BURNHAM	266 GROTON RD	NO CHELMSFORD	MA 01863	266 GROTON RD
22	92	2		LEEDBERG DAVID N TRUSTEE	JUNE A LEEDBERG	268 GROTON RD	NO CHELMSFORD	MA 01863	268 GROTON RD
23	92	7		POWER ROGER &	OF 268 GROTON RD RMTY TR	258 GROTON RD	NO CHELMSFORD	MA 01863	258 GROTON RD
23	92	8		GAUNTLETT GORDON T JR	STEPHANIE M POWER	264 GROTON RD	NO CHELMSFORD	MA 01863	264 GROTON RD
					ANDEA GAUNTLETT				

12

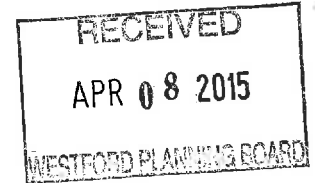


# NEWPORT MATERIALS

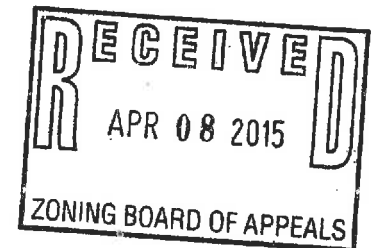
April 8, 2015

Town of Westford  
Planning Board  
Town Offices  
55 Main Street  
Westford, MA 01886

Town of Westford  
Zoning Board of Appeals  
Town Offices  
55 Main Street  
Westford, MA 01886



Town of Westford  
Board of Selectmen  
Town Offices  
55 Main Street  
Westford, MA 01886



Dear Board Members,

The date of our last planning board meeting which was held on April 6, 2015 marked six years to the day that I first appeared before your Planning Board to seek approvals and permit's to construct and operate an asphalt plant facility at 540 Groton Road. Much has happened since then: 21 hearings before Planning Board 1, a Land Court trial, which resulted in a remand decision from Judge Sands. Currently we have engaged in 6 hearings before Planning Board # 2 and 3 hearings with the Zoning Board of Appeals. To date this has been a long journey and process for all parties. There have been many conversations over the last six years about the project's output of sound, traffic, fire safety, public health and the product to be produced at the plant, Bituminous Concrete. I realize how very important all of these issues are to all of us. I want to share with you my personal perspective on what has taken place to this point, and prior to the planning Board voting on my project for the second time.

You have all seen me sitting at the meetings, quietly observing and very rarely speaking. I am originally from Watertown, MA. Many of you have seen Mr. Reilly at our meetings. Tom is my dear friend from Watertown. As you know I am the owner of Newport Construction and Newport Materials. These companies were started by me in 2000 and are family owed. The majority of the company's work is in the public sector - MassDOT, Municipalities, and US Government Agencies. We are a large road building and maintenance contractor that self performs all disciplines of road work, including paving.

My career began in this industry as a laborer when I was 18 years old. At the age of 20, I started a driveway paving business, which purchased all of its material at the Watertown asphalt plant. This facility was located less than  $\frac{3}{4}$  of a mile from my home.

There has been a long journey, which has led me to where we are today. Whatever I may have accomplished through the years has been done solely through hard work, honesty and



determination. Through my years of experience in this field I have been lucky enough to have been involved in every aspect of the paving business.

My interest in the land at the 540 Groton Road address has been over the last fifteen years as this has shown me that it is an ideal location for the asphalt plant with an active quarry next door to provide the necessary raw materials (ie: stone) that will come to me ready for use, as it will be sized when it arrives and will not require crushing from our site.

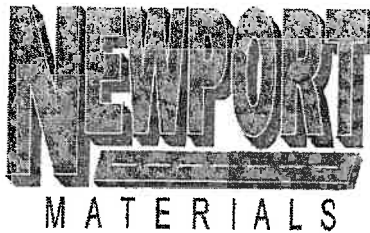
540 Groton Road also has tremendous access to a major highway system in Route 3, as it is 1800 ft. from my entrance. There is also close proximity to the Granite State concrete plant located at 520 Groton Road. This is also important as my company has a need for concrete in many of our projects.

In 2008, I was able to obtain a lease for 8 acres of the property at 540 Groton Road, which has since expanded to where Newport is now an owner of the property. When I obtained this lease and later purchased my ownership interest, I was aware that development of the property would be limited due to it being a quarry, but I felt it would be perfect for an asphalt plant to serve Newport's needs and it could also take advantage of the ABC recycling center as well.

My ABC (asphalt, brick, concrete) recycling facility is a stand alone, ongoing operation. Please note this is not part of the proposed asphalt plant project, and it has never been planned to be. The operation does what its name implies, it recycles asphalt, brick and concrete and sells the finished product to the MA Dept. of Public Works and various municipalities throughout the state. Its primary product is a processed gravel base that is routinely used on highway and road construction throughout the region. It also produces RAP, which is approximately 25% of the raw material used in the manufacturing of asphalt. But it is no more part of the project than the rock that will come from the quarry next door, the sand brought in from offsite or the liquid cement. The crusher is separate and distinct from the project and has always been recognized that way by the Town.

In 2009, after I obtained my lease, I met with the Town Manager, Jodi Ross, Ross Altobelli, the City Planner at the time, the Building Inspector and my attorney Doug Deschenes, at that meeting, we fully described the project to them. Mr. Deschenes explained what we wanted to do and that we could either seek a Special Permit from the Zoning Board to expand the existing non-conforming uses OR if it was determined that we qualified as a Light Manufacturing use, we would go before the Planning Board for the necessary Special Permits. The direction I received was that a Project of this size and complexity should be reviewed by the Planning Board and not the ZBA and therefore, if the Building Inspector determined we would qualify as Light Manufacturing, I should then apply to the Planning Board.

In March of 2009, I received a written determination from the Building Inspector saying that he considered based on the information he reviewed that we were considered a Light Manufacturing use. With this information in hand and as a Light Manufacturing facility, I went to the Planning Board for the



purpose of site plan review and the granting of special permits so that they could properly condition those permits.

Following the direction I was given by the Town, and the information I received by the Town, I proceeded to follow the path needed to obtain these permits. Unfortunately after 1 year and 21 public hearings, I was denied in April of 2010. Since this denial I have pursued all legal avenues through the Commonwealth of Massachusetts Land court system. These proceedings have brought us to where we are today.

I am a hard working businessman, I am not a lawyer. I respect the law and court orders and understand exactly what Judge Sands has required me to do to obtain approval of my project. I believe I have fully complied with each and every requirement.

#### Sound

As you know, my neighbor to the west, also known as Fletchers quarry is not concerned with any sound emitted from the project. Please note we do meet the projected sound requirements at this western property line as required by Judge Sands. Please note that per Mr. McClellan signed affidavit, he does not require a wall to be erected. As you are aware while I have asked for a waiver, I am fully prepared to construct a wall if required. At the last Planning Board meeting, the Town's sound expert clearly stated when asked, that my project meets the requirements of the remand decision. Please note we do meet the projected sound requirements at this western property line as required by Judge Sands.

#### Number of Employees

I have fully complied with the zoning ordinance by committing to employ 5 or more employees.

#### Variance

I've applied to the ZBA for a variance, which the Court has stated should be routinely granted, given the existing multiple uses I currently operate on this site.

#### Power Source

I have provided more than significant documentation that the project will be electrically powered.



MCP

As the Court directed, I have submitted a revised MCP application. The Town's Traffic peer reviewer, Mr. Michaud said there were no traffic issues that could not be routinely mitigated and that we would NOT change the level of service on Route 40. Current level of service is an 'A', current level of service WITH this project will continue to be an 'A'.

During this entire process, we have all heard the public comments concerning public health, safety and welfare. No one cares more than I do, about these very important issues. I have completed every test that has been asked of me by the Town, State, and even the opponents of the project during our initial hearings in 2009/2010. Included in those studies was an unprecedented HRA (health risk assessment) report, which analyzed potential impacts both on, and off site – and was designed to ensure the health and safety of our surrounding community. We have been found to be well within and below any and all Town, State, and Federal guidelines by ALL the peer reviewers of these test results. I am proud to say I have the cleanest Air quality permit ever issued in the State of Massachusetts by the DEP. It is worth noting that public health and safety were not disputed by the Town at trial.

I understand that approval of the project is subject to reasonable conditions, many of which are contained in a proposed list of conditions sent to Doug Deschenes by Chris Kluchman shortly before Monday's hearing. However, several of the proposed conditions are completely unreasonable and designed to cripple my business and stifle the productive use of my land. For example, the baseless effort to combine the crusher with the project and use it to limit traffic on the entire property rather than address traffic on a case by case basis is unreasonable. There are other examples which will be described in more detail by my attorney. I must however, respond directly to proposed condition #8 regarding voluntary mitigation offers made 5 years ago that were flat out rejected by the Town. Since then, the Town has put me through over 4 years of costly and unnecessary litigation and now a costly and unnecessarily difficult remand process. All of you have had the opportunity to view me over the past few months, 2 of you for the past 6 years. I think you will agree that I am reasonable, a bit frustrated at times, but a reasonable man nevertheless. But enough is enough. If the Town is willing to deal with me fairly and allow me to build and operate my plant with reasonable conditions, then I am willing to discuss reasonable mitigation but my offer of 5 years ago has long since expired.

Respectfully,

A handwritten signature in cursive script that reads "Richard A. DeFelice".

Richard A. DeFelice

President / CEO

Newport Materials



MANION GAYNOR & MANNING

21 Custom House Street  
Boston, MA 02110

617 670 8800 main  
617 670 8801 fax  
www.mgmlaw.com

RECEIVED

APR 08 2015

WESTFORD PLANNING BOARD

Thomas F. Reilly  
Of Counsel

Direct Dial: 617 670 8509

Direct Fax: 617 670 8709

E-mail: treilly@mgmlaw.com

Admitted In: MA,

April 8, 2015

Town of Westford  
Planning Board  
c/o Jonathan Silverstein, Esq.  
Kopelman and Paige, PC  
101 Arch Street  
Boston, MA 02110

Town of Westford  
Zoning Board of Appeals  
c/o Jonathan Silverstein, Esq.  
Kopelman and Paige, PC  
101 Arch Street  
Boston, MA 02110

**RE: Application pursuant to Remand by Land Court in  
Newport Materials, et al v. Planning Board of Westford, et al.  
10 Misc. 529867 (AHS)**

Dear Members of the Planning Board and Zoning Board of Appeals:

Various conditions in the "Issues for Consideration" memorandum dated April 6, 2015 violate the Court's December 8, 2014 Decision and settled Massachusetts law.

The Court's Decision states: "it would appear to this court that the Project [defined, by the Court, as the asphalt plant at Decision, pp. 6-8] would ... be permitted as of right as a light manufacturing use at Locus, subject to such conditions as the Board may reasonably require in order to approve Newport's special permit applications." Decisions, p. 32 (emphasis supplied).

Massachusetts law prohibits the imposition of conditions to special permits that are tantamount to a denial under the guise of a regulation. V.S.H. Realty v. ZBA Plymouth, 30 Mass. App. Ct. 530, 534-35 (1991) citing SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 110 n.16 (1984) (conditions must not "be used to enforce outright prohibitions under the guise of regulation").

Conditions, including those identified below, are completely unreasonable, untethered to legitimate issues (and/or directly controverted by the record), violate the Court's ruling and violate Massachusetts law as they amount to an illegal denial of the Project.

- (1) All conditions that purport to link the crusher (a pre-existing use permitted by the ZBA on February 11, 2009, and again on February 24, 2010 and February 16, 2011 by unanimous vote) to the asphalt plant are unreasonable and illegal. E.g., Conditions A2c, A3, B3c, and B6. The Court has already ruled that the "Project" before the Board is the asphalt plant, and not any pre-existing use(s) on the 115+ acre lot. Decision, pp. 6-

8. The uncontroverted evidence in the record is that the Project complies with the MCP By-law including, but not limited to, the "Noise" and "Traffic Management" provisions (By-law 9.3A.4(2) & (6) respectively).

- Regarding sound, the **Board's own sound peer reviewer concluded:** "[w]e judge that the sound model and proposed noise reduction measures provide useful sound estimates that indicate **compliance with 53 dBA sound criteria** along the west boundary of the asphalt plant site at a receptor elevation of 5 ft above grade." (Barnes ltr. dated 4/2/15, p. 2)(emphasis supplied).
- Regarding traffic, the **Board's own sound peer reviewer concluded:** "the currently proposed Project, following implementation of proposed access mitigation measures and stipulated daily vehicle trip restrictions, will result in **no notable detrimental capacity or queue impacts** to travel on Groton Road or area roadways serving the site within Westford." (Michaud ltr. dated 3/11/15, p. 1)(emphasis supplied).

Planning Staff's attempt to couple the Project (i.e., the asphalt plant) to the pre-existing crushing operation is an underhanded attempt to avoid the conclusions of the Town's own consultants. Moreover, Planning Staff's conclusion that the "two uses are physically and procedurally tied together" is flat out wrong. The crusher is a stand-alone business subject to a separate permit with its own conditions of operation. The crusher will supply material (recycled asphalt product/RAP) to the asphalt plant, just like the neighboring quarry (which is owned by a third-party) and other third-party suppliers of material to the asphalt plant. Clearly the quarry and the third-party suppliers are not part of the Project now before the Board, just like the crusher is not part of the Project on remand.

- (2) Condition B3c, which purports to limit vehicle traffic to the entire 115+ acre property to 450 trips (e.g., 225 vehicles coming and going from the site), is patently unreasonable and illegal. 150 trips are already permitted for the crusher per the ZBA decision voted on February 16, 2011. At trial and on remand, Newport has agreed to limit vehicle trips to the asphalt plant to 250 trips. These two uses are expected to occupy approximately 4 acres of the 115+ acre property. On remand, the Board has **no** authority to restrict vehicle trips to the remaining 110+ acres to 50 total vehicle trips per day (or 25 vehicles coming and going from the site). Accordingly, this condition epitomizes Planning Staff's gross overreaching and bad faith. Clearly, the Town's authority concerning vehicle trips associated with the rest of the site (i.e., the remaining 110+ acres) exists if/when other project(s) and permit(s) are sought in accordance with the By-laws, and not on this remand.
- (3) The mitigation proposed by Newport in March/April 2010 (**five years ago**) referenced in condition B9 has long since expired. It is disingenuous for the Town to suggest otherwise. In the interim, Newport has endured "over four years of costly litigation"



Town of Westford

April 8, 2015

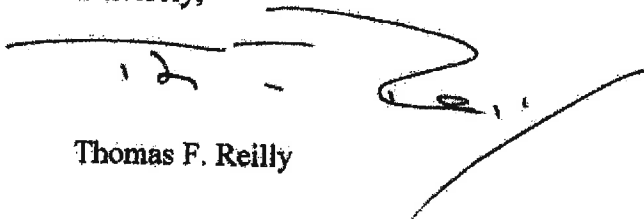
Page 3

(Decision, p. 33 fn.45). Over the course of the last 6+ years, the Town has conducted itself, and continues to conduct itself, in a totally inconsistent, unreasonable and unlawful manner and Planning Staff continues to demonstrate an "inability" and flagrant "unwillingness" (Decision, p. 33, fn.45) to comply with the Decision and the law. Newport remains willing to discuss reasonable conditions and mitigation.

(4) There are various other conditions that are impractical, unreasonable, erroneous and/or illegal. For example, but not limited to:

- Condition A3avii regarding the crusher is outside the scope of the remand, misleading and specious. As explained above, the crusher was properly approved by the ZBA back in 2009.
- Condition B3e4 regarding fluorescent tape is impractical and unsafe.
- Condition B4b regarding a bond in an unspecified amount where the Town's consultant and the Town's Fire Prevention Officer have already determined that the Project (specifically the tanks and vessels) meets (or exceeds) standards in the pertinent Massachusetts regulations and national consensus codes is unprecedented, ultra vires and in bad faith. (see, e.g., RJA ltr. dated 2/12/10 and Parson's ltr. dated 10/13/09).
- Condition B4f regarding an escrow account with no amount specified purportedly to be used when, in the discretion of the Board, the DEP fails its duties under the DEP air permit is unconscionable and subject to abuse by the Town.
- Condition B7 regarding rescission of the subdivision plan is punitive and illegal.

Sincerely,



Thomas F. Reilly

TFR/aaa  
#1398440

cc: Doug Deschenes, Esq.

**DESCHENES & FARRELL, P.C.**

Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

April 1, 2015

Westford Zoning Board of Appeals  
Attn: Jeff Morrisette  
55 Main Street  
Westford, MA 01886

**SENT VIA E-MAIL AND FIRST CLASS MAIL**

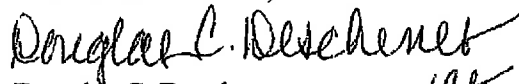
**RE: 540 Groton Road – Extension of Time to Act**  
**BOA 1501 SP (1) VAR (2)**

Dear Jeff and Members of the Board,

As the Board is aware, this office represents 540 Groton Road, LLC and Newport Materials, LLC regarding the above referenced applications to the Zoning Board of Appeals. Please allow this letter to serve as the Applicant's formal grant of an extension of time for the Board to issue a decision and enter the same with the Westford Town Clerk until May 15, 2015, or 14 days following the close of the re-opened public hearing on this matter, whichever is sooner.

Thank you for your time and attention to this matter.

Sincerely,  
Deschenes & Farrell, P.C.

  
Douglas C. Deschenes *1cf*

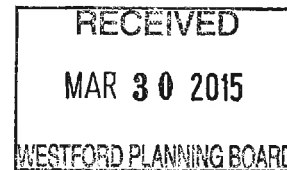
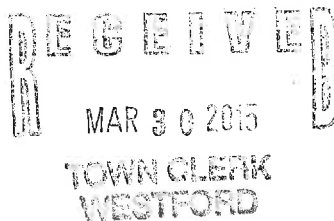
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MANION GAYNOR & MANNING

21 Custom House Street  
Boston, MA 02110

617 670 8800 *main*  
617 670 8801 *fax*  
www.mgmllaw.com



Thomas F. Reilly  
Of Counsel  
Direct Dial: 617 670 8509  
Direct Fax: 617 670 8709  
E-mail: treilly@mgmlaw.com  
Admitted In: MA,

March 30, 2015

Town of Westford  
Planning Board  
Town Offices  
55 Main Street  
Westford, MA 01886

Town of Westford  
Zoning Board of Appeals  
Town Offices  
55 Main Street  
Westford, MA 01886

Town of Westford  
Board of Selectmen  
Town Offices  
55 Main Street  
Westford, MA 01886

**RE: Application pursuant to Remand by Land Court in  
Newport Materials, et al v. Planning Board of Westford, et al,  
10 Misc. 529867 (AHS)**

Dear Members of the Planning Board, Zoning Board of Appeals and Board of Selectmen:

I am writing to you to object to the Town's excessive use of the litigation exception to the MA Open Meeting Law, G.L.c. 30A, 21(a)(3). To date, the Town has held 7 executive sessions, purportedly to "discuss strategy with respect to litigation". The sessions began on December 23, 2014 with a joint session of the Board of Selectmen and the Planning Board, which was followed on January 8, 2015 with a joint session of the Planning and Zoning Board of Appeals. These joint sessions were followed by an additional 4 executive sessions before every session of the Planning Board that dealt with this matter and 1 with the Zoning Board of Appeals. An additional 2 executive sessions with the Planning Board were scheduled but cancelled due to snow storms. See attached list.

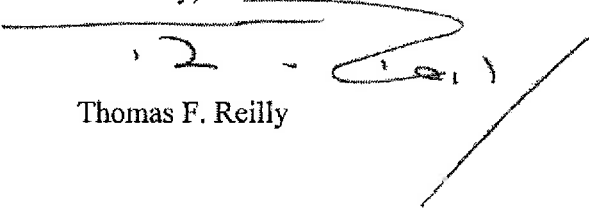
We believe these closed sessions are highly irregular, totally unnecessary, inconsistent with the Open Meeting Law and in direct contravention of Judge Sands' directive on page 32 of his decision, strongly encouraging the parties to maintain "an active and *open* dialogue" (emphasis added) throughout the resubmission process. We also believe they have adversely affected my client's due process rights.



Town of Westford  
March 30, 2015  
Page 2

These secret sessions are a disservice to the public and to my client and should cease immediately, although I fear the damage may have already been done. In addition, the minutes of each session should be prepared and held aside for potential in camera review by the Court. A litigation hold should also be placed on any notes, emails and other materials related to the listed executive sessions.

Sincerely,



Thomas F. Reilly

TFR/aaa  
#1394202v2



Town of Westford  
March 30, 2015  
Page 3

### List of Executive Sessions

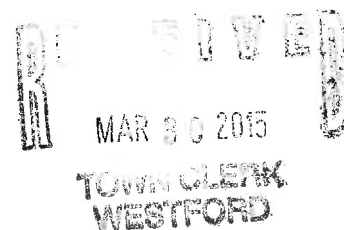
1. 12/23/14 - JOINT Selectmen and Planning Boards
2. 1/8/15 - JOINT ZBA and Planning Boards
3. 1/21/15 - Planning Board
4. 1/26/15 - Planning Board-- Cancelled SNOW
5. 2/2/15 - Planning Board-- Cancelled SNOW
6. 2/12/15 - Planning Board
7. 2/25/15 - Zoning Board of Appeals
8. 3/2/15 - Planning Board
9. 3/16/15 - Planning Board



MANION GAYNOR & MANNING

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Boston, MA 02110

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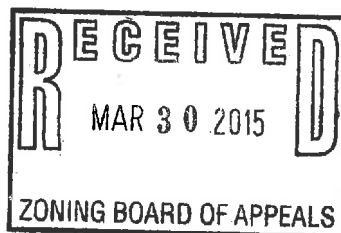


Thomas F. Reilly  
Of Counsel  
Direct Dial: 617 670 8509  
Direct Fax: 617 670 8709  
E-mail: treilly@mgmlaw.com  
Admitted In: MA,

March 30, 2015

Town of Westford  
Planning Board  
Town Offices  
55 Main Street  
Westford, MA 01886

Town of Westford  
Zoning Board of Appeals  
Town Offices  
55 Main Street  
Westford, MA 01886



RE: **Application pursuant to Remand by Land Court in  
Newport Materials, et al v. Planning Board of Westford, et al.,  
10 Misc. 529867 (AHS)**

Dear Members of the Planning Board and Zoning Board of Appeals:

The purpose of this letter is to set the record straight in advance of the next ZBA meeting, which the Town suddenly scheduled for tomorrow night, March 31, 2015, on only 48 hours' notice. This letter has been filed with the Town, and Newport requests that copies be provided to the individual ZBA members immediately in light of the highly unusual circumstances or, alternatively, that the meeting be postponed.

The Land Court issued a Decision dated December 8, 2014 concerning "the Project," which is an asphalt plant located on an approximately two acre parcel within a 115.52 acre lot at 540 Groton Road (the "Groton Parcel"). (Decision, pp. 6-8) A copy of the Decision is attached hereto as Exhibit I.

The Court's Decision remanded the matter to the Planning Board "*for further proceedings consistent with [the] decision.*" (Decision, p. 1, emphasis added)

In the Decision, the Court *clearly articulated the path forward* for the Parties (i.e., Newport and the Planning Board):

*"Plaintiff should resubmit to the Board a modified site plan review application (a) incorporating the sound attenuation barriers recommended by CTA, (b) provide that the Project will employ five or more employees, (c) requesting a variance to operate more than one principal use on the Groton Parcel, and (d) addressing the issue of the Project's power sources. Such a revised application must be also accompanied by*

revised applications for MCP and WRPOD special permits.” (Decision, p. 32, emphasis added)

“If so submitted, *it would appear to this court that the Project would then be permitted as of right as a light manufacturing use at the Locus*, subject to such conditions as the Board may reasonably require in order to approve Newport’s special permit applications.” (Decision, p. 32, emphasis added; see also Decision, p. 20 and p. 29 fn.40)

The Court further stated that:

“In the interest of avoiding future litigation before this court, the Board’s assessment of any such resubmitted plans shall be made in accordance with the findings and rulings contained in this decision. The parties are strongly encouraged to maintain an active and open dialog through the resubmission process in order to resolve any continuing dispute they have in such a way as to ensure that the Locus can be optimally used by the Plaintiffs while also accommodating any legitimate concerns Defendants may have as to the possible effects such uses(s) may have.” (Decision, p. 32-33, emphasis added)

Newport has met its Court mandate and is entitled to approvals from the Planning Board and ZBA forthwith.

(a) Sound Attenuation Barriers (relevant to whether the Project is “quiet machinery” within the definition of a by-right Light Manufacturing use)

Based on evidence from the Planning Board’s sound expert, the Court found that expected sound from the Project complied with the only sound limits in Westford Zoning Bylaws (the “Bylaws”) and in the DEP Regulations (i.e., below 70 dBA (total sound) or 10 dBA above ambient) at the north, south and east boundaries as well as at the nearest residential receptors (1400’ to 4000’+ away) without a sound barrier. (Decision, pp. 28-29)<sup>1</sup>

The Court determined that the only issue concerning sound was at the western boundary. (Decision, p. 28) The Fletcher Quarry, which is a 100 year old, 300+ foot deep open rock quarry, is located on the 163 acre lot adjacent to the Groton Parcel to the west. (Decision, p. 7) The owner of the quarry, John MacLellan III, has submitted a letter to this Board stating that he has “no issues with the proposed Project. Furthermore, I have no issues with the potential sound that the Project may create. I support the granting of the requested permits including, the waiver of the sound attenuation barrier along my property line.” (MacLellan ltr. dated 1/13/15, emphasis added) A copy of Mr. MacLellan’s letter is attached hereto as Exhibit 2.

<sup>1</sup> These parameters are set forth in the MCP Bylaw and DEP Sound Regulations. (Decision, pp. 25-26). Since “quiet machinery” is not specifically defined in the Bylaw, the Court found that compliance with these parameters constitutes “quiet” machinery. (Decision, p. 26).

Notwithstanding that the *direct abutter at the relevant location supports* the Project and *does not* want a sound barrier, if the Planning Board insists, Newport will install one. The Court commented that “[p]laintiff has signaled a willingness to agree to build noise attenuation barriers...which would appear to be a *perfectly reasonably way to accommodate Defendants’ concerns.*” (Decision, p. 33 fn.45, emphasis added)

Newport has submitted to the Planning Board documentation from its sound expert (CTA) which identifies sound attenuation barriers and related mechanisms that will reduce sound from the Project at the western boundary to *below* 70 dBA (total sound) and 10 dBA above ambient (here 53 dBA). (CTA/Konning ltr. dated March 10, 2015) A copy of CTA/Konning’s letter with exhibits is attached hereto as Exhibit 3. Specifically, CTA/Konning conclude:

“All sound produced simultaneously from all asphalt plant sound sources operating during full plant operations at all elevations above grade would result in sound levels of less than 53 dBA at all locations along the Newport Materials western property line, and at all locations at all elevations on the Fletcher Quarry industrial rock quarry property....”

“The CTA refined noise control design response in accordance with the Peer Reviewer request has resulted in current projections of sound levels that are lower (better) than previous projections, and which indicate acoustical compliance with the most-stringent applicable acoustical criteria of the Town of Westford, at the compliance location stipulated in the Land Court Decision (and beyond).” (Exhibit 3, p. 7)

**Newport has complied with requirement (a) of the Decision.**

(b) **5 (or more) Employees** (relevant to whether the Project is a by-right Light Manufacturing use under the Table of Uses)

The Court characterized the 5 (or more) employee requirement in order to qualify as a by-right Light Manufacturing use under the Table of Uses as “*nonsensical*[.]” (Decision, p. 23 fn.31, emphasis added) The Court stated that it “can think of *no reason* why a zoning ordinance would permit large-scale manufacturing operations but forbid small-scale manufacturing operations.” (Id., emphasis added) The Court also stated that “Newport *can easily remedy* this defect on remand to the Board by simply revising the site plans for the Project so that five or more employees will be employed.” (Id., emphasis added)

Consistent with the Court’s Decision, Newport’s principal, Rick DeFelice, has submitted an affidavit dated January 30, 2015 to the Planning Board wherein he commits to employ 5 or more individuals on the Project and he describes their respective roles. (DeFelice aff. pars. 3-4) A copy of Mr. DeFelice’s affidavit is attached hereto as Exhibit 4.

**Newport has complied with requirement (b) of the Decision.**

**(c) Requesting a Variance to Operate More Than One Principal Use on the Property**  
(relevant to Bylaw 3.1.1)

The Court opined that “the Project would be an ideal use of the Locus [i.e., the 2 acre parcel within the nearly 116 acre Groton Parcel], given its proximity to the Fletcher Quarry and Newport’s rock crushing facility, and *based on the overall industrial nature of the area.*” (Decision, p. 33 fn. 45) In addition, the Court concluded that “all that is needed to conduct multiple primary uses is a *simple variance*” (Decision, p. 11 fn. 13) “which, the court expects, given the multiple uses already being conducted at the Groton Parcel, *would be routinely granted.*” (Decision, p. 29 fn.40).

In accordance with the Court’s Decision (as revised), on January 5, 2015 Newport applied to the ZBA for permission to operate multiple uses on the site. The basis for allowing multiple uses (in addition to the Court’s statements above) are set forth in a letter from Newport’s land use counsel to the ZBA, a copy of which is attached hereto (without exhibits) as Exhibit 5. A final decision from the ZBA is pending.

**Newport has complied with requirement (c) of the Decision.**

**(d) Project’s Power Sources** (relevant to whether the Project is within the definition of a by-right Light Manufacturing use)

The Court determined that the Project must be either (a) electric powered; or (b) powered by “other substantially noiseless and inoffensive motor power” under the Bylaw definition of Light Manufacturing (Decision, p. 24). The Court stated that “it appears that the majority of the equipment sought to be installed will be powered substantially (if not entirely) by electrical means. At first blush, then, *it would appear likely that this requirement will be satisfied by the Project.*” (Decision, pp. 24-25)

Consistent with the Court’s Decision, Newport has submitted a letter and an affidavit dated January 28, 2015 from the manufacturer of the asphalt plant, Gencor Industries, specifying that the Project will be electric powered. A copy of the letter and affidavit are attached hereto as Exhibit 6.

**Newport has complied with requirement (d) of the Decision.**

**Revised MCP and WRPOD Applications**

Per the Court’s Decision, Newport submitted revised MCP and WRPOD materials to the Planning Board. Regarding these permits:

Town of Westford

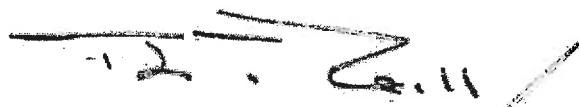
March 30, 2015

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- Any concerns raised regarding traffic have been addressed and resolved as indicated in the submission by Newport's traffic expert, Jeffrey Dirk of Vanasse and Associates, Inc., dated February 2015. A copy of Mr. Dirk's report is attached hereto as Exhibit 7. The Planning Board's traffic consultant, Robert Michaud of MDM Transportation Consultants in a letter dated March 11, 2015, concurred. A copy of Mr. Michaud's letter is attached hereto as Exhibit 8.
- Any concerns regarding public health were resolved before trial. Specifically, "[h]ealth, safety or welfare" issues were waived by the Planning Board at trial. The Court repeatedly cited to, and relied, on this waiver in its Decision. (See, e.g., Decision, p. 9 fn. 9 "[t]he remainder of this provision sets forth an additional restriction prohibiting uses that are detrimental to health or safety (the 'Prohibition Clause')". The parties have stipulated that the *Project is not in violation of the Prohibition Clause*"; see also, Decision, p. 12 and p. 22 "the parties have agreed that the Project would not violate the Prohibition Clause").
- Any concerns regarding noise have been resolved as set forth above.
- Any other issues (e.g., lighting, landscaping, stormwater etc.) have been addressed and/or can be made conditions of the permit(s) per the Court's Decision: "[a]ny other issues as to compliance with the letter of the Bylaw would seem to be minor issues . . ." (Decision p. 33 fn.45)
- Finally, the issues in Staff Notes dated January 17, 2015 and March 13, 2015 have been addressed by Newport during this Remand process, including through Newport's counsel's last submission on March 27, 2015.

Newport has complied with all components of the Decision (and the Bylaws) and is entitled to approval of its permits from the Planning Board and variance(s) from the Zoning Board forthwith.

Sincerely,



Thomas F. Reilly

TFR/aaa  
#1394202v2

cc: Jonathan Silverstein, Esq. (via e-mail)